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13 *Attorneys for Defendant*

14
 15 **UNITED STATES DISTRICT COURT**
 16 **DISTRICT OF ARIZONA**

17
 18 Helen Roe, a minor, by and through her parent
 and next friend Megan Roe; James Poe, a
 19 minor, by and through his parent and next
 friend Laura Poe; and Carl Voe, a minor, by
 20 and through his parent and next friend, Rachel
 Voe,

21 Plaintiffs,

22 v.

23 Don Herrington, in his official capacity as
 24 Interim State Registrar of Vital Records and
 Interim Director of the Arizona Department of
 25 Health Services,

26 Defendant.

NO. 4:20-cv-00484-JAS

**DEFENDANT’S MOTION TO
 SEAL EXHIBIT 2 (DKT. 122-2) TO
 DEFENDANT’S MOTION TO
 COMPEL PLAINTIFFS’
 SUPPLEMENTAL RESPONSE TO
 DEFENDANT’S DISCOVERY
 REQUESTS**

27
 28

1 Defendant filed a Motion for Leave to File Exhibits and Attachments to Defendant's
2 Motion to Compel Plaintiffs' Supplemental Responses to Defendant's Discovery Requests
3 Under Seal. (*See* Dkt. 123.) The Court granted Defendant's Motion. (Dkt. 125.)

4 Defendant inadvertently failed to redact three words on a single page contained in
5 Attachment 8 to Exhibit 2—filed at Dkt. 122-2, ECF Page 51 out of 82—which contains
6 personal identifying information regarding a minor Plaintiff. The Clerk of the Court
7 temporarily sealed this Exhibit on June 8, 2022. A redacted version of the entire Exhibit at
8 Dkt. 122-2 is attached to this Motion. Defendant therefore respectfully requests that Dkt.
9 122-2 remain sealed, and that the redacted version of that document (attached) be filed on
10 the public docket.

11
12 DATED this 10th day of June, 2022.

13 STRUCK LOVE BOJANOWSKI & ACEDO, PLC

14
15 By /s/Dana M. Keene

16 Daniel P. Struck
17 Nicholas D. Acedo
18 Dana M. Keene
19 3100 West Ray Road, Suite 300
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21 MARK BRNOVICH
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25 1275 West Washington Street
26 Phoenix, AZ 85007

27 *Attorneys for Defendant*
28

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2022, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Asaf Orr	aorr@nclrights.org
Barrett J. Anderson	banderson@cooley.com
Colin M. Proksel	cproksel@omlaw.com
Mary R. O’Grady	mogrady@omlaw.com
Patrick P. Gunn	pgunn@cooley.com
Payslie M. Bowman	pbowman@omlaw.com

I hereby certify that on this same date, I served the attached document by U.S. Mail, postage prepaid, on the following, who is not a registered participant of the CM/ECF System:

N/A

/s/Dana M. Keene

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ATTACHMENT

EXHIBIT 2

**Declaration of Dana M. Keene -
Redacted/ Sealed**

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 Patricia Cracchiolo LaMagna, Bar #021880
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13 *Attorneys for Defendant*

14
 15 **UNITED STATES DISTRICT COURT**
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 18 Helen Roe, a minor, by and through her parent
 and next friend Megan Roe; James Poe, a
 19 minor, by and through his parent and next
 friend Laura Poe; and Carl Voe, a minor, by
 20 and through his parent and next friend, Rachel
 Voe,

21 Plaintiffs,

22 v.

23 Don Herrington, in his official capacity as
 24 Interim State Registrar of Vital Records and
 Interim Director of the Arizona Department of
 25 Health Services,

26 Defendant.

NO. 4:20-cv-00484-JAS

DECLARATION OF DANA M. KEENE

27 I, Dana M. Keene, declare as follows:
 28

1 1. I am over the age of 18 years and am competent to testify to and have personal
2 knowledge of the matters set forth in this Declaration.

3 2. I am counsel for Defendant Don Herrington in this matter and make this
4 Declaration in support of Defendant’s Motion to Compel Plaintiffs’ Supplemental
5 Responses to Defendant’s Discovery Requests. I make the representations below after
6 having reviewed all documents and correspondence in my possession and from my own
7 personal knowledge of this case.

8 3. The parties exchanged initial disclosure statements on September 10, 2021.
9 A true and correct copy Plaintiffs’ Initial Disclosures served on September 10, 2021 is
10 attached hereto as Attachment 1.

11 4. Defendant served his First Set of Requests for Production of Documents and
12 First Set of Interrogatories to Plaintiffs on September 23, 2021.

13 5. Plaintiffs served their responses and objections to these discovery request on
14 November 8, 2021. True and correct copies of Plaintiffs’ Responses and Objections to
15 Defendant’s First Set of Interrogatories and Responses and Objections to Defendant’s First
16 Set of Requests for Production of Documents are attached hereto as Attachment 2 and 3,
17 respectively.

18 6. In response to Defendant’s First Set of Requests for Production, Plaintiffs
19 produced a total of 19 pages of documents consisting of screenshots of Lizette Trujillo’s
20 Facebook poll questions on the Families Transformed and Arizona Trans Youth Parent
21 Organization’s (“AZTYPO”) private Facebook group pages and Southern Arizona
22 Transgender Alliance’s (“SAGA”) Facebook page, and the “results” of these polls. All
23 names of the poll responders were redacted.

24 7. On December 10, 2021, defense counsel sent correspondence to Plaintiffs’
25 counsel outlining the numerous deficiencies in Plaintiffs’ responses to Defendant’s First Set
26 of Requests for Production of Documents and Interrogatories, and requested that Plaintiffs
27 supplement their responses and produce additional relevant and responsive documentation.
28 A true and correct copy of correspondence from defense counsel to Plaintiffs’ counsel dated

1 December 10, 2021 is attached hereto as Attachment 4.

2 8. The parties met and conferred over the telephone on December 17, 2021
3 regarding Plaintiffs' deficient responses.

4 9. On January 10, 2022, Plaintiffs sent correspondence to Defendant providing
5 some general and specific objections to Defendant's discovery requests on various grounds.
6 A true and correct copy of correspondence from Plaintiffs' counsel to defense counsel dated
7 January 10, 2022 is attached hereto as Attachment 5.

8 10. Plaintiffs indicated that despite these objections, they were "willing to
9 conduct reasonable searches and inquire as to the existence of certain subsets of documents
10 sought by Defendant." (Att. 5 at 2.)

11 11. They also indicated that they would produce non-privileged documents on a
12 "rolling" basis without specifying what they were producing or when these "rolling"
13 productions would occur. (*Id.*)

14 12. By letter dated February 17, 2022, Defendant further clarified his discovery
15 requests, and outlined the areas where there appeared to be a discovery dispute. A true and
16 correct copy of correspondence from defense counsel to Plaintiffs' counsel is attached
17 hereto as Attachment 6.

18 13. Defendant requested that Plaintiffs supplement their discovery responses by
19 March 4, 2022, and informed Plaintiffs that he would be moving forward with a discovery
20 dispute motion on the disputed issues if the parties could not agree. (*Id.* at 3.)

21 14. On March 4, 2022, Plaintiffs produced documents as part of a second
22 "rolling" production, which included Corporate Bylaws and Articles of Incorporation for
23 AZTYPO and SAGA, as well as what appeared to be a State Court Order granting Helen
24 Roe's Application for Change of Name for a Minor and an Order Correcting Documents,
25 and piecemeal school records for all three minor Plaintiffs. A true and correct copy of
26 correspondence from Plaintiffs' counsel to defense counsel dated March 4, 2022 is attached
27 hereto as Attachment 7. Plaintiffs' counsel made it clear that "more materials" would
28 follow. (*Id.*)

1 15. On April 19, 2022, the parties attended a telephonic meet and confer to
2 discuss ESI discovery. At the meet and confer, Plaintiffs' counsel indicated they would be
3 producing their third and final "rolling" production of documents.

4 16. On April 26, 2022, defense counsel sent Plaintiffs' counsel correspondence
5 again outlining the areas where Plaintiffs' discovery responses were deficient and requested
6 that Plaintiffs supplement their discovery responses and produce complete and relevant
7 information and/or documentation responsive to Defendant's requests. A true and correct
8 copy of an email chain between defense counsel and Plaintiffs' counsel is attached hereto
9 as Attachment 8.¹ (See Att. 8 at 17-18.)

10 17. On April 28, Plaintiff produced their third "rolling" production of documents.
11 A true and correct copy of correspondence from Plaintiffs' counsel to defense counsel is
12 attached hereto as Attachment 9.

13 18. This production contained approximately 2,398 pages of documents.

14 19. Plaintiffs failed to identify a single document in this production and have not
15 updated their disclosure statement to specifically identify *any* of the documents they have
16 produced in this case. Nonetheless, Plaintiffs produced a random assortment of documents
17 in this production containing both responsive and non-responsive information, including:
18 (1) correspondence from the minor Plaintiffs' parents to school teachers and administrators;
19 (2) correspondence from the minor Plaintiffs' parents to various individuals regarding
20 extracurricular activities; (3) Facebook and Instagram messages between the minor
21 Plaintiffs' parents, Lizette Trujillo, and other individuals whose names are redacted, as well
22 as messages from what appears to be a group chat, although it is unclear who is in the group
23 chat or why; (4) various PowerPoint presentations by Lizette Trujillo entitled "Parenting a
24 Transgender Child"; (5) documents regarding each minor Plaintiffs' petition for name

25 ¹ The dates and times on some of the electronic correspondence exchanged between
26 counsel as reflected on the email chain in this Attachment are inaccurate. For instance,
27 defense counsel sent an email to Plaintiffs' counsel on April 26, 2022 at 8:50 a.m., but the
28 timestamp on this email chain shows that it was sent on April 27, 2022 at 12:50 a.m. That
is not correct. Nonetheless, the specific dates and times this electronic correspondence was
sent and received by counsel is not material to the issues in this case.

1 change; and (6) documents that appear to be related to a Small Grant Request Application
2 submitted on behalf of SAGA.

3 20. Hundreds of pages of documents produced by Plaintiffs contain either block
4 redactions or are redacted completely without explanation. Defendant subsequently
5 requested that Plaintiffs produce a redaction log that describes the subject matter of the
6 redacted information so he could determine whether relevant documents are being withheld.
7 Plaintiffs agreed to produce this redaction log by June 6, 2022.

8 21. Also on April 28, 2022, Plaintiffs supplemented their responses to
9 Defendant's First Set of Interrogatories, but only with respect to Interrogatory No. 10. A
10 true and correct copy of correspondence from Plaintiffs' counsel to defense counsel dated
11 April 28, 2022 is attached hereto as Attachment 10.

12 22. On the same date, Plaintiffs' counsel sent correspondence to defense counsel
13 indicating that they believed their supplemental response to Interrogatory No. 10 and final
14 production constituted their "last written response" referenced in Paragraph (1) of the Case
15 Management Order (dkt. 100), and that the 30-day timeframe for Defendant to conduct
16 depositions would start from that date. A true and correct copy of correspondence from
17 Plaintiffs' counsel to defense counsel dated April 28, 2022 is attached hereto as Attachment
18 11.

19 23. By correspondence dated April 29, 2022, defense counsel objected to
20 Plaintiffs' contention that their supplemental response to Interrogatory No. 10 and final
21 production constituted a "last written response," and requested that Plaintiffs supplement
22 their disclosure statement and discovery responses, as most of their responses were
23 materially incomplete and/or incorrect. A true and correct copy of correspondence from
24 defense counsel to Plaintiffs' counsel dated April 29, 2022 is attached hereto as Attachment
25 12.

26 24. The parties exchanged extensive communications after this. (Att. 8 at 1-17.)
27 Specifically, Defendant requested that Plaintiffs supplement their disclosure statement to
28 identify all documents produced to date. (Att. 8 at 8-14.) Defendant also requested that

1 Plaintiffs supplement their responses to Defendant's First Set of Interrogatories and
2 Requests for Production of Documents to not only identify the documents responsive to
3 Defendant's Requests for Production, but to provide full and complete responses to the
4 discovery requests previously identified by Defendant. (*Id.*) Plaintiffs refused to do so,
5 claiming that they were not required to serve supplemental discovery responses. (Att. 8 at
6 6-7, 10-11, 13-16.)

7 25. Plaintiffs ultimately agreed to supplement their responses to Defendant's First
8 Set of Requests for Production of Documents, but *only* to add Bates ranges for the
9 documents they produced. (Att. 8 at 6-7, 10.)

10 26. Plaintiffs served their Supplemental Responses and Objections to
11 Defendant's First Set of Requests for Production of Documents on May 13, 2022. A true
12 and correct copy of correspondence from Plaintiffs' counsel to defense counsel dated May
13 13, 2022 is attached hereto as Attachment 13. A true and correct copy of Plaintiffs'
14 Supplemental Responses and Objections to Defendant's First Set of Requests for
15 Production of Documents is attached hereto as Attachment 14.

16 27. Despite supplementing their responses to Defendant's Requests for
17 Production to include Bates ranges, they have failed to specifically identify any of the
18 documents that are responsive to these requests. Nor have they supplemented their
19 responses to include any substantive information.

20 28. To date, Plaintiffs have not served a supplemental disclosure statement.
21 Defendant has been left to guess what the documents produced are and what requests they
22 are responsive to.

23 29. Aside from supplementing their response to Interrogatory No. 10, they have
24 not supplemented any other responses to Defendant's First Set of Interrogatories.

25 30. The documents produced by Plaintiffs at AZTYPO00001-00042 are Non-
26 Profit Corporate Bylaws and Articles of Incorporation for AZTYPO. The documents
27 produced at SAGA00001-00023 are also Articles of Incorporation and Bylaws for SAGA.
28 These documents are not responsive to Request Nos. 2 or 4.

1 31. The documents produced by Plaintiffs at TRUJILLO0000009-0000020 are
2 the purported “results” of the Facebook polls referenced in Lizette Trujillo’s Declaration.

3 32. The documents produced by Plaintiffs at TRUJILLO0000021-0000032
4 appear to be related to a Small Grant Request Application submitted on behalf of SAGA.
5 The documents produced at TRUJILLO0000033-0000084 are various PowerPoint
6 presentations by Lizette Trujillo entitled “Parenting a Transgender Child.” Documents
7 produced at TRUJILLO0000085-0000367 appear to be Lizette Trujillo’s Facebook
8 Messenger and Instagram messages with various individuals whose names have been
9 redacted. Hundreds of pages of documents in this Bates range contain either block
10 redactions or are completely redacted. Documents produced at TRUJILLO0000368-
11 0000370 appear to be social media posts and/or flyers regarding SAGA and Families
12 Transformed.

13 33. Documents produced at Trujillo0000001-0000370 do not contain information
14 responsive to Request No. 2. Documents produced in this Bates range show the number of
15 members in the Families Transformed and AZTYPO private Facebook groups, but do not
16 contain information pertaining to group administrators, membership demographics, and/or
17 membership criteria for these groups and is thus only partially responsive to Request No. 4.

18 34. The documents produced by Plaintiffs on April 28, 2022, at POE00522-01290,
19 ROE00088-00227, and VOE00354-00356 contain only Facebook and Instagram messages
20 for Laura Poe, Megan Roe, and Rachel Voe. It is entirely unclear what many of these
21 messages are, how they are relevant, with whom they involve (all individuals aside from
22 the Plaintiffs and Ms. Trujillo are redacted), and in what context. Many of these messages
23 appear to be related to one group (although it is not specified) and either contain block
24 redactions or are redacted in full. Aside from these messages, Plaintiffs have failed to
25 produce any other social media documents, including profiles, posts, status updates, wall
26 comments, causes joined, groups joined, activity streams, applications, blogs, photographs,
27 or videos/media clips that are responsive to this request. It is unclear whether there are
28 other private messages responsive to this request.

1 35. The purported minor Plaintiffs’ “school records” produced by Plaintiffs at
2 POE00001-00072, ROE00001-00024, and VOE00001-00020 contain only some
3 enrollment records, report cards, and email communications between the minor Plaintiffs’
4 parents and teachers and school administrators at their respective schools. These records are
5 piecemeal and incomplete.

6 36. Plaintiffs failed to produce records from the majority of institutions listed in
7 response to Interrogatory No. 9, including Redacted
8 Redacted
9 Redacted.

10 37. With respect to the minor Plaintiffs’ school records, Plaintiffs’ counsel has
11 represented that the minor Plaintiffs’ parents attempted to obtain their child’s records from
12 all of the institutions listed in response to Interrogatory No. 9 (Redacted
13), and that the records produced were all that
14 were provided to Plaintiffs’ parents by these institutions. (Att. 8 at 1-4.)

15 38. Defendant would like to obtain authorizations for the release of the minor
16 Plaintiffs’ school records so that he can independently subpoena and/or request records
17 from all institutions Redacted
18). (Att. 4 at 10; Att. 8 at 2.)

19 39. Defendant has provided specific authorizations for the release of these records
20 and has requested that Plaintiffs’ parents execute and return these releases. (Att. 8 at 2.)
21 Plaintiffs refused to execute these releases. (Att. 8 at 1.)

22 40. In response to Request No. 8, Plaintiffs produced an undated “Letter
23 Certifying Applicant’s Gender Change” from James Poe’s physician, stating that he had
24 appropriate clinical treatment for transition to male. (See POE01291.) Plaintiffs also
25 produced a letter dated December 9, 2019 from Helen Roe’s physician indicating that she
26 had appropriate clinical treatment for transition to female. (See ROE00033.) Plaintiffs have
27 refused to produce any other documents responsive to this request.
28

1 I DECLARE UNDER PENALTY OF PERJURY THE LAWS OF THE UNITED
2 STATES OF AMERICA AND THE STATE OF ARIZONA THAT THE FOREGOING IS
3 TRUE AND CORRECT.

4 Executed in Chandler, Arizona on June 6th, 2022.

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6 /s/Dana M. Keene
7 Dana M. Keene
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ATTACHMENT 1

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11 *Attorneys for Plaintiffs and Proposed Class*
Additional counsel listed on signature page

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 D.T., a minor, by and through his parent and
next friend Lizette Trujillo; Jane Doe, a
16 minor, by and through her parent and next
friend Susan Doe; Helen Roe, a minor, by
17 and through her parent and next friend
Megan Roe; James Poe, a minor by and
18 though his parent and next friend Laura
Poe; and Carl Voe, a minor by and though
19 his parent and next friend Rachel Voe,

20 Plaintiffs,

21 v.

22 Dr. Cara M. Christ, in her official capacity
as State Registrar of Vital Records and
23 Director of the Arizona Department of
Health Services; Thomas Salow, in his
24 official capacity as Branch Chief of the
Division of Public Health Licensing
25 Services at the Arizona Department of
Health Services; and Krystal Colburn, in her
26 official capacity as Bureau Chief and
Assistant State Registrar of the Bureau of
27 Vital Records at the Arizona Department of
Health Services,

28 Defendants.

Case No. 4:20-cv-484-JAS

PLAINTIFFS' INITIAL DISCLOSURES

1 Plaintiffs Helen Roe, James Poe, and Carl Voe (“Plaintiffs”), by and through their
2 undersigned counsel, and pursuant to Federal Rule of Civil Procedure 26(a)(1), hereby submit
3 the following Initial Disclosures (“Disclosures”). These Disclosures are based on the
4 information reasonably available to Plaintiffs as of this date and represent a good faith effort
5 by Plaintiffs to identify discoverable information that they reasonably believe may be used to
6 support their claims or defenses, as required.

7 Plaintiffs’ Disclosures are made without waiving: (1) any claim of privilege or work
8 product; (2) the right to object on the grounds of competency, relevancy and materiality,
9 hearsay, or any other proper ground, to the use of any such information, for any purpose, in
10 whole or in part, in any subsequent proceeding in this action or any other action; and (3) the
11 right to object to any and all grounds, at any time, to any other discovery request or proceeding
12 involving or relating to the subject matter of these Disclosures.

13 Plaintiffs expressly reserve the right to supplement or modify these Disclosures as
14 additional information becomes available. These Disclosures do not include information that
15 may be used solely for impeachment purposes, or identify or otherwise include information
16 concerning experts, as this subject is not covered by Fed. R. Civ. P. 26(a)(1). Plaintiffs will
17 provide their expert disclosures, if applicable, pursuant to Fed. R. Civ. P. 26(a)(2) and the case
18 management report.

19 1. Witnesses (the name, and, if known, the address and telephone number of each
20 individual likely to have discoverable information—along with the subjects of that
21 information—that the disclosing party may use to support its claims or defenses, unless solely
22 for impeachment).

23 Plaintiffs provide the following list of individuals based upon their most present or most
24 recent knowledge and belief:

25 **Helen Roe**
26 c/o Asaf Orr, Esq.
27 National Center for Lesbian Rights
28 870 Market Street, Suite 370
San Francisco, CA 94102
(415) 365-1326

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Subjects of information are facts regarding the harms caused by the conduct and policies of Defendant and the Arizona Department of Health Services (“ADHS”) that are at issue in this litigation.

Megan Roe
c/o Asaf Orr, Esq.
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
(415) 365-1326

Subjects of information are facts regarding (a) the harms caused by the conduct and policies of ADHS that are the subject to this litigation and (b) the burdens of attempting to amend the sex listed on the birth certificate of a transgender individual in Arizona.

James Poe
c/o Asaf Orr, Esq.
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
(415) 365-1326

Subjects of information are facts regarding the harms caused by the conduct and policies of Defendant and ADHS that are at issue in this litigation.

Laura Poe
c/o Asaf Orr, Esq.
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
(415) 365-1326

Subjects of information are facts regarding (a) the harms caused by the conduct and policies of ADHS that are the subject to this litigation and (b) the burdens of attempting to amend the sex listed on the birth certificate of a transgender individual in Arizona.

Carl Voe
c/o Asaf Orr, Esq.
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
(415) 365-1326

1 Subjects of information are facts regarding the harms caused by the conduct and
2 policies of Defendant and ADHS that are at issue in this litigation.

3 **Rachel Voe**
4 c/o Asaf Orr, Esq.
5 National Center for Lesbian Rights
6 870 Market Street, Suite 370
7 San Francisco, CA 94102
8 (415) 365-1326

9 Subjects of information are facts regarding (a) the harms caused by the conduct and
10 policies of ADHS that are the subject to this litigation and (b) the burdens of attempting
11 to amend the sex listed on the birth certificate of a transgender individual in Arizona.

12 **Lizette Trujillo**
13 c/o Asaf Orr, Esq.
14 National Center for Lesbian Rights
15 870 Market Street, Suite 370
16 San Francisco, CA 94102
17 (415) 365-1326

18 Subjects of information are facts regarding (a) the harms caused by the conduct and
19 policies of ADHS that are the subject to this litigation and (b) the burdens of attempting
20 to amend the sex listed on the birth certificate of a transgender individual in Arizona.

21 **Other current and former ADHS employees or staff not yet known to Plaintiffs.**

22 **Plaintiffs incorporate the witnesses identified by Defendant or any other party to
23 this matter, whether or not those witnesses are later withdrawn or de-designated.**

24 **Any custodians of record or other witnesses necessary to provide the required
25 foundation for any exhibits, documents, or other materials.**

26 Plaintiffs reserve the right to seek discovery from, and relating to, other persons that
27 may subsequently become known as persons likely to have discoverable information. Plaintiffs
28 further reserve the right to designate or call further witnesses at trial, including for purposes
of rebuttal or impeachment. If any persons not included herein are identified in any future
discovery responses by either party or are deposed in this case, Plaintiffs hereby incorporate
those persons as individuals likely to have discoverable information that Plaintiffs may use to
support their claims or defenses.

1 2. Documents (A copy of, or a description by category and location of, all
2 documents, electronically stored information, and tangible things that are in the possession,
3 custody, or control of the disclosing party that the disclosing party may use to support its
4 claims or defenses, unless solely for impeachment).

5 Without waiving any objections or claims of privilege or work product or stipulating to
6 the relevancy of any materials; and expressly reserving their right to supplement, Plaintiffs
7 identify the following hardcopy or electronic records in their possession, custody or control:

- 8 a. All pleadings in this matter and attachments thereto;
9 b. All discovery, documents, communications, or other information that is
10 produced, served, exchanged, or filed in this matter;
11 c. All depositions taken in this matter and exhibits thereto;
12 d. Documents containing information regarding the need of Plaintiffs Helen
13 Roe, James Poe, and Carl Voe for birth certificates that accurately reflect
14 their sex; and
15 e. Correspondence with Defendant regarding its policies that are the subject
16 of this litigation.

17 **Plaintiffs incorporate those documents identified by Defendant.**

18 **Plaintiffs reserve their right to supplement this list during discovery.**

19 3. Damages (A computation of any category or damages claimed by the disclosing
20 party, making available for inspection and copying as under Rule 34 the documents or other
21 evidentiary material, not privileged or protected from disclosure, on which such computation
22 is based, including materials bearing on the nature and extent of injuries suffered).

23 Plaintiffs seek injunctive and declaratory relief and any other relief the Court deems
24 proper. Plaintiffs do not seek monetary damages.

25 4. Insurance Agreements (For inspection and copying as under Rule 34 any
26 insurance agreement under which any person carrying on an insurance business may be liable
27
28

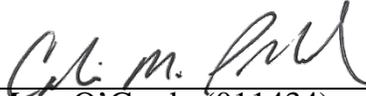
1 to satisfy part or all of a judgment which may be entered in the action or to indemnify or
2 reimburse for payments made to satisfy the judgment).

3 Plaintiffs are not subject to, or aware of, any applicable insurance agreements.

4
5
6 Dated: September 10, 2021

Respectfully submitted,

OSBORN MALEDON, P.A.

7 

8 Mary O'Grady (011434)
9 Colin Proksel (034133)
10 Payslie Bowman (035418)
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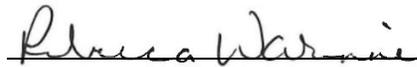
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2 this 10th day of September, 2021, to:

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ATTACHMENT 2

to Declaration of Dana M. Keene - Sealed

ATTACHMENT 3

to Declaration of Dana M. Keene - Sealed

ATTACHMENT 4



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December 10, 2021

BY EMAIL

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RE: *Roe, et al, v. Herrington*, Case No. 4:20-cv-484-JAS
Deficiencies in Plaintiffs' Discovery Responses

Counsel,

This correspondence is being provided to you in anticipation of the parties' scheduled meet and confer on December 17, 2021, to discuss Plaintiffs' Responses to Defendant's First Set of Interrogatories and First Set of Requests for Production of Documents, and to attempt to resolve any disputes.

Plaintiffs' General Responses and Objections

While general objections to instructions and/or definitions in a party's discovery requests may be appropriate, general, prefatory objections to discovery requests precursing a set of discovery responses are disfavored and improper because they provide "no basis to determine where its objections end and its responses begin...[and] no basis to begin a discussion about whether [the party] has made a reasonable effort to identify responsive information or documents." *See Weidenhamer v. Expedia, Inc.*, No. C14-1239RAJ, 2015 WL 1292978, at *7-8 (W.D. Wash. Mar. 23, 2015) (finding that a party's use of prefatory general objections is a per se violation of the Federal Rules of Civil Procedure); *see also Springer v. Gen. Atomics Aeronautical Sys. Inc.*, No. 16CV2331-BTM(KSC), 2018 WL 490745, at *2 (S.D. Cal. Jan. 18, 2018) (overruling all general objections contained in an introductory section entitled "General Objections" in party's discovery responses as boilerplate, non-specific, unsupported, and improper).

The "General Responses" and "General Objections" in your Responses are general, boilerplate, and constitute an abuse of the discovery process. *See Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) ("[B]oilerplate

Asaf Orr
 December 10, 2021
 Page 2

objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege.”); *Walker v. Lakewood Condo. Owners Ass’n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999) (“Boilerplate, generalized objections are inadequate and tantamount to not making any objection at all.”).

Moreover, the failure to assert objections in response to a specifically enumerated request for production or interrogatory constitutes a waiver of that objection. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (“[I]t is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection.”). To that end, Plaintiffs are not permitted to “reserve the right” to object in the future. *See Del Socorro Quintero Perez v. U.S.*, No. 13CV1417-WQH-BGS, 2016 WL 304877, at *2 (S.D. Cal. Jan. 25, 2016) (“Written responses to requests for production must be unconditional, and may not reserve the right to raise objections in the future.”) Plaintiffs’ “incorporation” of these objections in their specific responses to discovery is also impermissible and improper. *See Weidenhamer*, 2015 WL 1292978, at *6-8.

Former Plaintiffs Lizette Trujillo/D.T. and Susan Doe/Jane Doe

Information and documentation in the possession of and/or regarding former Plaintiffs Lizette Trujillo and D.T. is relevant to the claims and defenses in this action due to Ms. Trujillo’s continued involvement in this case, and particularly because Ms. Trujillo’s Declaration is the only substantive Declaration on which Plaintiffs rely in their Motion for Class Certification. Plaintiffs have thus placed Ms. Trujillo’s and D.T.’s involvement at issue by relying on her Declaration. The Court has permitted Defendants to depose Ms. Trujillo during the class-related discovery period, and Defendant intends to question her about her and D.T.’s experiences as they relate to this lawsuit.

In addition, the dismissal of Ms. Trujillo, D.T., and former Plaintiffs Jane Doe and Susan Doe from this case is of minimal import. One of the defenses that Defendant is asserting is that all transgender persons in Arizona may seek to amend their birth certificates via the process outlined in A.R.S. § 36-337(A)(4). D.T. and Jane Doe utilized this process in amending their birth certificates. Thus, documentation and information regarding all efforts undertaken on their behalf to amend their birth certificates, including their knowledge of this process, is relevant to the claims and defenses in this lawsuit and is discoverable. *See Fed. R. Civ. P. 26(b)(1)* (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim *or defense* and proportional to the needs of the case...”) (emphasis added).

Plaintiffs’ Specific Responses and Objections to Defendant’s Discovery Requests

Federal Rule of Civil Procedure 34 requires that a response to a request for production “must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons.” Fed. R. Civ. P. 34(b)(2)(B). Further, “[a]n objection must state whether any responsive materials are being

Asaf Orr
December 10, 2021
Page 3

withheld on the basis of that objection” and “[a]n objection to part of a request must specify the part and permit the inspection of the rest.” Fed. R. Civ. P. 34(b)(2)(C).

Similarly, Federal Rule of Civil Procedure 33(b)(3) requires that each interrogatory must, to the extent not objected to, be answered separately and fully in writing. Moreover, the “grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.” Fed. R. Civ. P. 33(b)(4).

Plaintiffs’ responses to Defendant’s First Set of Requests for Production of Documents (“RFP”) and First Set of Interrogatories (“ROG”) are deficient, as discussed in detail below.

RFP No. 1:

RFP No. 1 requests that Plaintiffs produce *all* documents including, but not limited to, correspondence, applications, petitions, and/or court orders showing that Plaintiffs and former Plaintiffs D.T. and Jane Doe attempted to or did correct, amend, or change the sex-gender field on their birth certificates. Plaintiffs responded, stating that they will produce responsive, non-privileged documents in their possession, custody, and control concerning Plaintiffs’ petitions to change the gender marker listed on their birth certificates that are located following a reasonably diligent search. Plaintiffs have yet to produce any document responsive to this request. In addition, Plaintiffs did not indicate whether any documents other than the referenced petitions exist, whether Plaintiffs intend to produce or withhold these documents pursuant to Fed. R. Civ. P. 34(b)(2)(C), or whether Plaintiffs object to their production. All objections not specifically asserted are therefore waived. *Richmark*, 959 F.2d at 1473.

Nevertheless, Plaintiffs’ objections regarding the attorney-client privilege, work-product doctrine, and the right to privacy under the Arizona constitution are boilerplate and lack specificity. *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d at 1149. To the extent Plaintiffs’ response contains privileged information or information protected by the work-product doctrine, Plaintiffs should indicate the nature of the document and the asserted privilege on a privilege log. To the extent Plaintiffs claim that any responsive documentation potentially violates their right to privacy, Defendant will stipulate that documents containing private or sensitive information shall be designated and produced as confidential under the parties’ Protective Order.

Defendant disagrees that this request lacks limitation. Defendant is requesting any and all documentation related to a particular event as it pertains to each named Plaintiff and D.T. and Jane Doe. Given each minor Plaintiffs’ age and the allegations in Plaintiffs’ Amended Complaint, this request is sufficiently limited.

These documents are highly relevant to the claims and defenses in this case, particularly with respect to whether the named Plaintiffs have standing to assert their claims on behalf of the Proposed Class and are necessary to depose Ms. Trujillo and the parents of the minor Plaintiffs. Information and/or documentation pertaining to D.T. and Jane Doe is relevant for the reasons stated, above.

Asaf Orr
December 10, 2021
Page 4

Based on the foregoing, please produce all responsive documents pertaining to Plaintiffs' and the former Plaintiffs' petitions to amend the gender marker on their birth certificates. Please supplement Plaintiffs' response to state with specificity whether any other documentation, including but not limited to correspondence, applications, and/or court orders, showing that Plaintiffs and the former Plaintiffs attempted to or did correct, amend, or change the sex-gender field on their birth certificates exists and produce the same. If Plaintiffs contend that any responsive documentation is privileged, please produce a privilege log.

RFP No. 2 and ROG No. 1:

Plaintiffs' responses to RFP No. 2 and ROG No. 1 are deficient. Plaintiffs relied on the Declaration of Ms. Trujillo as evidence in support of their Motion for Class Certification. Ms. Trujillo attested, among other things, that certain groups exist—including Southern Arizona Gender Alliance (“SAGA”), the Families Transformed Support Group, and Arizona Trans Youth and Parent Organization (“AZTYPO”)—whose members are or may be members of the putative Class. Plaintiffs relied on Ms. Trujillo's assertions in their Motion for Class Certification to show that there is sufficient numerosity to certify the class. (Dkt. 89 at 6.)

None of the allegations in Ms. Trujillo's Declaration are backed by verifiable evidence. Thus, Defendant's requests are relevant to her allegations. Defendant is permitted to verify whether the attestations made in Ms. Trujillo's Declaration are indeed true.

RFP No. 2 and ROG No. 1 request that Plaintiffs produce information and documentation showing the respective number of individuals who are members of, involved in, and/or otherwise associated with SAGA, the Families Transformed Support Group, and/or AZTYPO.

Ms. Trujillo's Declaration is extremely vague. It is unclear whether the groups she references require formal memberships, or whether individuals and/or families can simply become “involved in” or “associated with” them. It is also unclear whether the “members” she references are individuals, or entire family units. Significantly, it is unclear how many members/individuals are indeed transgender or parents/legal guardians of transgender minors. Please clarify this in Plaintiffs' supplemental responses.

The Facebook polls produced (Trujillo0000001-0000019) only show how many individuals belong to the SAGA, Families Transformed, and AZTYPO private Facebook groups. Similarly, Plaintiffs' response to ROG No. 2 simply reiterates the number of members in these Facebook groups, and states that SAGA has approximately 885 individuals on its “email list.” This information is not fully responsive to either of these requests. Plaintiffs did not provide any indication as to whether responsive materials were being withheld in accordance with Fed. R. Civ. P. 34(b)(2)(C), or whether they object to the production of this information. All objections not specifically asserted are therefore waived. *Richmark*, 959 F.2d at 1473.

Plaintiffs' objection as to time-period is improper given that Ms. Trujillo's Declaration did not include any dates, time-periods, or limitations to support her assertions. Thus, Plaintiffs should

Asaf Orr
December 10, 2021
Page 5

assume that the relevant time-period is the same timeframe Ms. Trujillo relied upon in making the assertions in her Declaration, whatever that may be.

Plaintiffs' objections that these request "seeks to impose upon Plaintiffs an obligation to investigate or discovery information or materials from third parties and not within the custody and control of the Plaintiffs" also lack merit. Plaintiffs cannot rely on assertions in Ms. Trujillo's Declaration, but then refuse to produce evidence verifying this information under the guise that they do not possess or control it. Pursuant to Fed. R. Civ. P. 26(g)(1), Plaintiffs' counsel is required to make a reasonable inquiry to obtain information prior to responding to discovery requests. Ms. Trujillo presumably has possession of or access to at least some information or documentation showing the number of individuals in these groups and their identities, and Plaintiffs have a duty to obtain that information and produce it given their reliance on Ms. Trujillo's Declaration to support class certification.

This information is directly relevant and proportional to Rule 23's numerosity requirement to determine whether individuals in these groups are members of the putative Class, or parents of members of the putative Class. Please supplement Plaintiffs' responses to RFP No. 2 and ROG No. 1 accordingly and produce all information and/or documentation that shows the respective number of individuals who are members of, involved in, and/or otherwise associated with these groups.

RFP No. 3:

The crux of Plaintiffs' claims is that disclosure of their transgender status causes them "significant emotional harm and puts them at risk of discrimination, harassment, and violence." (Dkt. 47 at ¶ 1.) The potential information gleaned from social media accounts is relevant to not only Plaintiffs' allegations of emotional distress, but it is ultimately relevant to whether the named Plaintiffs have standing, whether their claims are typical of the putative Class, and whether they are adequate to represent the Proposed Class. *See Williams v. Cty. of San Diego*, No. 17CV00815MMAJLB, 2019 WL 2330227, at *9 (S.D. Cal. May 31, 2019) (because plaintiffs were only seeking emotional distress damages and did not claim any physical injury or economic damages, defendant was entitled to show other factors contributed to plaintiff's emotional distress in defending against plaintiff's damages claim).

Defendant is not required to simply accept Plaintiffs' statements about their emotional distress as true; he is entitled to verify the damages claimed and assess the magnitude of those damages through, among other sources, Plaintiffs' social media accounts and communications. *See Barten v. State Farm Mut. Auto. Ins. Co.*, No. CV-12-00399-TUC-CKJ, 2015 WL 11111477, at *2 (D. Ariz. June 17, 2015) ("Evidence that a plaintiff's emotional distress may have been caused by other stressors in the plaintiff's life is admissible, even if such evidence is relevant only to emotional distress damages and not to liability."); *see also Wilkins v. Maricopa Cty.*, No. CV-09-1380-PHX-LOA, 2010 WL 2231909, at *4 (D. Ariz. June 2, 2010) ("Because Plaintiff seeks damages for emotional distress...fundamental fairness mandates that [defendant] be permitted to challenge that

Asaf Orr
December 10, 2021
Page 6

claim thoroughly” by showing whether there are sources of plaintiff’s emotional distress other than defendant’s actions or omissions).

Because “social media activity, to an extent, is reflective of an individual’s contemporaneous emotions and mental state,” information contained and exchanged on social media platforms is relevant to Plaintiffs’ allegations of emotional distress. *Hinostroza v. Denny’s, Inc.*, No. 217CV02561RFBNJK, 2018 WL 3212014, at *6 (D. Nev. June 29, 2018). The scope of social media discovery is broad and includes “online social media communications by plaintiff, including profiles, postings, messages, status updates, wall comments, causes joined, groups joined, activity streams, applications, blog entries, photographs, or media clips, as well as third-party online social media communications that place plaintiff’s own communications in context.” *Robinson v. Jones Lang LaSalle Americas, Inc.*, No. 3:12-CV-00127-PK, 2012 WL 3763545, at *2 (D. Or. Aug. 29, 2012). Private information not available for public view (including private communications sent using Facebook Messenger) is also discoverable. *See Brown v. City of Ferguson*, No. 4:15CV00831 ERW, 2017 WL 386544, at *2 (E.D. Mo. Jan. 27, 2017) (compelling private messages sent through Facebook). Social media information need not directly address or reference the events or claims in the complaint to be discoverable. *E.E.O.C. v. Simply Storage Mgmt., LLC*, 270 F.R.D. 430, 436 (S.D. Ind. 2010). Thus, Defendant is entitled to a broad scope of discovery into Plaintiffs’ and Ms. Trujillo’s/D.T.’s social media information that showcase any other factors that could have contributed to their child’s emotional distress, the extent and/or magnitude of the emotional distress, or whether they suffered from emotional distress at all. *See Brown*, 2017 WL 386544, at *2 (the scope is “broad” and “overly expansive.”).

Plaintiffs’ objections regarding privacy concerns are unavailing. *See Hinostroza*, 2018 WL 3212014, at *6 (“Generally, social networking content is neither privileged nor protected by any right of privacy.”) (internal quotations omitted). Defendant stipulates that any private or confidential information shall be produced under the parties’ Protective Order. *See E.E.O.C. v. Simply Storage Mgmt., LLC*, 270 F.R.D. 430, 434 (S.D. Ind. 2010) (finding that privacy and confidentiality concerns can be addressed by appropriate protective order); *Brown*, 2017 WL 386544, at *1 (privacy concerns addressed by protective order, which was amended to include information disclosed pursuant to specific discovery request); *see also A.G. v. Oregon Dep’t of Hum. Servs.*, No. 3:13-CV-1051-AC, 2014 WL 317016, at *6 (D. Or. Jan. 28, 2014) (finding that entry of protective order is the most “efficient and effective” method of getting discovery to parties while protecting information of minor plaintiffs).

Moreover, Plaintiffs and Ms. Trujillo have the legal right to obtain the documents requested, and aside from general and conclusory objections, Plaintiffs have failed to proffer evidence showing that the requested documents are “not reasonably accessible because of undue burden or cost.” Fed. R. Civ. P. 26(b)(2)(b). To the contrary, “Facebook has made it easy for Facebook users to download their account data for a specific timeframe.” *Bruner v. City of Phoenix*, No. CV-18-00664-PHX-DJH, 2020 WL 554387, at *8 (D. Ariz. Feb. 4, 2020).

Asaf Orr
December 10, 2021
Page 7

Defendant will agree to limit this request to the following content contained on Plaintiffs' and Ms. Trujillo's/D.T.'s social media accounts: (1) any and all information and/or communications related to this lawsuit; (2) any and all information and/or communications related to the claims and injuries in this lawsuit, including all information and communications regarding amendments to birth certificates; (3) any and all information and/or communication regarding the minor Plaintiffs' and D.T.'s transgender status and lifestyle (including information disclosing that the minor Plaintiffs and D.T. are transgender, and any mention of their gender dysphoria diagnoses/treatment, and transition); (4) any and all information and/or communication regarding Plaintiffs' and Lizette Trujillo/D.T.'s emotions, feelings, and mental state; (5) any and all information and/or communication regarding the minor Plaintiffs' school, interests, activities, and lifestyle; (6) any and all information and/or communication regarding the minor Plaintiffs' relationships with friends, family, teachers, mentors, etc.; (7) any and all information and/or communication regarding specific life events (including, but not limited to, births, deaths, graduations, vacations, achievements, disappointments, etc.); and (8) any and all information and/or communications regarding transgender rights.

Defendant will also agree to further limit this request with respect to former Plaintiffs Susan Doe and Jane Doe to information related to this lawsuit, the claims asserted, and the amendment of Jane Doe's birth certificate.

Plaintiffs should produce all posts, private messages, photographs, videos, and any other content that is responsive. Plaintiffs should also produce a detailed relevance log describing all information not produced, including the type and content, and if any information was deleted and when.

RFP No. 4:

Plaintiffs' Response to RFP No. 4 is deficient. Defendant requested that Plaintiffs produce evidence showing the number of members in the Families Transformed and AZTYPO private Facebook groups referenced in Ms. Trujillo's Declaration, including information pertaining to group administrators, membership demographics, and/or membership criteria. Plaintiffs subsequently produced documents showing only the number of members in these private Facebook groups but failed to produce any information pertaining to group administrators, membership demographics, and/or membership criteria. Plaintiffs failed to state whether responsive materials were being withheld in accordance with Fed. R. Civ. P. 34(b)(2)(C), or whether Plaintiffs specifically object to the production of this information. All objections not specifically asserted are therefore waived. *Richmark*, 959 F.2d at 1473.

Plaintiffs' objection that this request "seeks to impose upon Plaintiffs an obligation to investigate or discover information or materials from third parties and not within the custody and control of the Plaintiffs" lacks merit. Plaintiffs cannot rely on assertions in Ms. Trujillo's Declaration, but then refuse to produce evidence verifying this information under the guise that they do not possess or control it. Pursuant to Fed. R. Civ. P. 26(g)(1), Plaintiffs' counsel is required

Asaf Orr
December 10, 2021
Page 8

to make a reasonable inquiry to obtain information prior to responding to discovery requests. Ms. Trujillo presumably has possession of or access to at least some documentation showing the number of individuals in these groups and their identities, and Plaintiffs have a duty to obtain that information and produce it. In addition, it appears that Ms. Trujillo manages both the SAGA and Families Transformed private Facebook groups and would have access to this information. (Dkt. 89-1 at ¶ 7; Trujillo0000007 and 0000014.)

Furthermore, Plaintiffs' objection as to time-period is improper given that Ms. Trujillo's Declaration did not include any dates, time-periods, or limitations to support her assertions. Thus, Plaintiffs should assume that the relevant time-period is the timeframe Ms. Trujillo relied upon in making the assertions in her Declaration, whatever that may be.

This information is directly relevant and proportional to Rule 23's numerosity requirement to determine whether individuals in these groups are members of the putative Class, or parents of members of the putative Class. Information pertaining to group administrators and membership demographics and/or criteria is also relevant to the typicality and commonality requirements. In addition, Defendant is entitled to verify whether individuals in these groups have birth certificates in the State of Arizona. Accordingly, please supplement Plaintiffs' Response and produce all documentation and/or information regarding group administrators, membership demographics, and/or membership criteria for these groups.

RFP No. 6:

Plaintiffs' Response is deficient and unresponsive. Plaintiffs claim that “[s]chool enrollment, recreational sports registrations, and camp signups, among many others, hinge on having proper identity documents.” (*Id.* at ¶¶ 2, 42, 92.) They claim that the alleged deprivation of accurate birth certificates “causes several distinct and significant harms: it creates barriers to full participation in school and other activities that are critical to a young person’s health and well-being, circumvents that young person’s ability to control the disclosure of their transgender status, undermines the effectiveness of a transgender young person’s treatment for gender dysphoria, and exposes a transgender young person to an increased risk of harassment, discrimination, and potentially bodily harm.” (*Id.* at ¶ 43.)

The Amended Complaint also contains specific allegations regarding each minor Plaintiff’s (and D.T.’s) involvement at school, preschool, and/or with their peers. For instance, Plaintiffs allege that James Poe allegedly dressed in boys’ clothing at school and referred to himself as a boy. (*Id.* at ¶¶ 95-96.) Plaintiffs further allege that James was mistreated by some of his peers, and that in 2019 he attended a program at his school with children of different class levels and ages, where he reported being repeatedly told by an older student that he was a girl, not a boy. (*Id.* at ¶ 99.) Plaintiffs claim that James’s parents enrolled him in private school to avoid the public school’s requirement that he provide a birth certificate to enroll. (*Id.* at ¶ 100.)

Asaf Orr
December 10, 2021
Page 9

Plaintiffs allege that Helen Roe exhibited a “marked improvement” since her transition. (*Id.* at ¶ 90.) They also claim that Helen experienced prejudice because she is transgender, and that another parent called the director of Helen’s preschool to allege that Helen was a threat to their children’s security. (*Id.* at ¶ 91.)

Plaintiffs allege that when Carl Voe was in kindergarten, his parents learned that other children were asking him whether he was a boy or a girl and would not believe him regardless of how he answered, and that Carl addressed his class to tell them that he did not like their questions. (*Id.* at ¶ 106.) Carl was allegedly not eating his lunch at school and refusing to use the restroom during the school day out of fear. (*Id.*) After kindergarten, he adopted male pronouns and the anger he once experienced eased, but when he entered first grade he was faced with continued questions about his gender and was referred to as a girl by other students and school staff. (*Id.* at ¶ 107.) Carl’s parents moved him to a new school for second grade, but a few other students from Carl’s old school moved to the new school and Carl’s anger was replaced by anxiety and fear that he would be outed and face the questions and mistreatment by his peers and staff. (*Id.* at ¶ 108.) He moved to distance learning halfway through second grade, but he claims that remote learning exacerbated his gender dysphoria, and his mother began to homeschool him in October 2020. (*Id.* at ¶ 109.)

Plaintiffs claim that D.T. “tried to use the boy’s restroom when he could and would not line up with the girls at school when teachers divided the class by sex.” (*Id.* at ¶ 61.) Plaintiffs also claim that D.T. rarely smiled, was anxious, quiet, and developed breathing tics and fidgeted nervously. (*Id.* at ¶ 62.) Plaintiffs claim that at least one other child at school referred to D.T. as a boy. (*Id.* at ¶ 63.) They claim that once D.T. transitioned, his anxiety decreased, and his behavioral tics disappeared. (*Id.* at ¶ 65.) Plaintiffs also claim that D.T. was harassed and assaulted at school for being transgender and that he has significant anxiety and worry about not being accepted by others or mistreated if he is forced to disclose that he is transgender. (*Id.* at ¶¶ 67-68.)

All or some of this information is likely contained within the minor Plaintiffs’ and D.T.’s preschool, daycare, and/or school files. These records are relevant for numerous reasons. First, they could show whether any daycare and/or school requires a child’s birth certificate to enroll, which could disprove Plaintiffs’ claims that they were “forced” to disclose their transgender status. They could also contain teacher, school administrator, and/or guidance counselor notes, correspondence, and/or progress reports regarding the minor Plaintiffs’ and D.T.’s alleged behaviors and difficulties at school and could document instances of bullying and harassment. Conversely, Plaintiffs’ and D.T.’s school records could show that they were thriving in the school environment and with their peers pre- and/or post-transition. Likewise, the minor Plaintiffs’ and D.T.’s report cards and grades are indicative of their well-being and adjustment.

Plaintiffs’ objection to the term “records” is improper. The term “record” is defined as a “documentary account of past events, usually designed to memorialize those events,” and as “information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form.” Black’s Law Dictionary (11th ed. 2019). The

Asaf Orr
December 10, 2021
Page 10

term “records” can reasonably be interpreted as requesting all documents (as defined in Defendant’s First Set of Interrogatories) that are or were kept in the usual course of business at each daycare, preschool, or school attended by each minor Plaintiff and D.T.

Plaintiffs allege that all minor Plaintiffs and D.T. began to express that they were the opposite sex as early as one-and-a-half years old. (*Id.* at ¶¶ 59, 87, 95, 104.) Defendant agrees to limit this request from the age of two to the present. Given the minor Plaintiffs’ and D.T.’s ages and these allegations, all records from two years old to the present are relevant and proportional to the needs of this case.

Moreover, Plaintiffs’ objection that this request “seeks to impose upon Plaintiffs an obligation to investigate or discover information or materials from third parties and not within the custody and control of the Plaintiffs” lacks merit. Actual possession of documents is not required. Documents are deemed to be in a party’s possession, custody, or control if the party has a “legal right to obtain documents upon demand.” *United States v. Int’l Union of Petroleum and Indus. Workers, AFL-CIO*, 870 F.2d 1450, 1452 (9th Cir. 1989). The minor Plaintiffs’ and D.T.’s parents have the legal right to obtain their child’s daycare, preschool, and school records, and Plaintiffs’ objection regarding their inability to discover information or materials from third parties is both inapplicable and misleading.

Because Plaintiffs have included detailed allegations regarding the minor Plaintiffs’ emotional injuries and their experiences at school, they have placed the minor Plaintiffs’ school records at issue and Defendant is entitled to this information. These documents are highly relevant to the claims and defenses in this case, and especially relevant to whether these Plaintiffs were injured as alleged, and whether they adequately represent the Proposed Class and are necessary to depose Ms. Trujillo and the parents of the current minor Plaintiffs. Finally, information and/or documentation pertaining to former Plaintiff D.T. is relevant for the reasons stated, above.

Accordingly, please produce all records from daycare facilities, preschools, and/or schools attended by the minor Plaintiffs and D.T. identified in Plaintiffs’ response to ROG No. 9 from two years old to the present. Alternatively, Defendant has included blank releases for Plaintiffs and D.T. to execute and return so that Defendant may subpoena these entities for these records.

RFP No. 7:

In response to Defendant’s ROG No. 10, Plaintiffs provided a list of activities the named minor Plaintiffs have participated in and attempted, presumably since birth, and Plaintiffs did not object to this timeframe. Plaintiffs, however, have limited their forthcoming production of documents to documents dated after November 1, 2019, without explanation. There is no basis for that arbitrary limitation.

Plaintiffs allege that all minor Plaintiffs and D.T. began to express that they were the opposite sex as early as one-and-a-half years old. (*Id.* at ¶¶ 59, 87, 95, 104.) Defendant agrees to limit this request from the age of two to the present. Given the minor Plaintiffs’ and D.T.’s ages

Asaf Orr
December 10, 2021
Page 11

and these allegations, all records from two years old to the present are relevant and proportional to the needs of this case.

Next, and as stated above, Plaintiffs claim that the alleged deprivation of accurate birth certificate causes “significant harms” that are “barriers” to full participation in activities “critical to a young person’s health and well-being,” and have alleged that the minor Plaintiffs and D.T. expressed interest in participating in certain activities but did not do so because registration required a birth certificate. (*Id.* at ¶¶ 43, 68, 101, 110.) Thus, the information requested is directly relevant to the claims and defenses in this case to establish that the minor Plaintiffs have suffered the injuries they claim and can adequately represent the Proposed Class. Defendant is also entitled to verify whether these activities required birth certificates as Plaintiffs allege. Information pertaining to former Plaintiff D.T. is relevant for the reasons stated, above.

Moreover, Plaintiffs’ objection that this request “seeks to impose upon Plaintiffs an obligation to investigate or discover information or materials from third parties and not within the custody and control of the Plaintiffs” lacks merit. Documents are deemed to be in a party’s possession, custody, or control if the party has a “legal right to obtain documents upon demand.” *United States v. Int’l Union of Petroleum and Indus. Workers, AFL-CIO*, 870 F.2d at 1452. The minor Plaintiffs’ and D.T.’s parents have the legal right to obtain their child’s activity registration records, and Plaintiffs’ objection regarding their inability to discover information or materials from third parties is improper.

This information is necessary to take the depositions of Plaintiffs’ parents and Ms. Trujillo. Please produce all documentation showing each minor Plaintiffs’ and D.T.’s participation and/or attempted participation in all activities identified in Plaintiffs’ response to ROG No. 10 from the date of their birth to present. Alternatively, Defendant has included blank releases for Plaintiffs and D.T. to execute and return so that Defendant may subpoena these entities for these records.

RFP No. 8 and ROG No. 11:

Defendant does not dispute “the medical definition of gender identity/gender dysphoria, or the accepted medical/psychological best practices to treat gender dysphoria in minors.” *See* Dkt. 84 at p. 7. Defendant also does not *anticipate* a dispute regarding Plaintiffs’ diagnoses and treatment of gender dysphoria. *Id.* Defendant has made clear, however, that he disputes the “social and emotional impact that Plaintiffs allege is the result of A.R.S. § 36-337” and whether Rule 23’s class certification elements are satisfied. *Id.*

Plaintiffs’ medical and/or mental health records are directly relevant to the claims and defenses in this case. First, Defendant is entitled to verify that the named Plaintiffs have been diagnosed with gender dysphoria by a qualified medical or mental health provider and whether they are currently treating (or were previously treating) for gender dysphoria. This is relevant to the typicality and commonality requirement and is relevant to whether any named Plaintiff lacks standing to assert these claims on behalf of the Proposed Class. Defendant is also entitled to

Asaf Orr
December 10, 2021
Page 12

discover information about the Plaintiffs' alleged injuries, the extent of those injuries, and whether Plaintiffs sought treatment for those injuries, which may be contained within any number of records, for the same reasons. Information related to D.T. is relevant to the defenses in this case for the reasons stated above.

Plaintiffs have failed to provide any evidence or support for their assertion that the information sought is protected by "applicable medical records, doctor-patient, or psychotherapist-patient privilege, or the right to privacy in the Arizona Constitution." This objection is boilerplate and insufficient. *See Burlington N. & Santa Fe Ry. Co.*, 408 F.3d at 1149. Moreover, Plaintiffs have waived any physician-patient or psychotherapist-patient privilege by placing their gender dysphoria diagnoses and treatment at issue. To the extent Plaintiffs claim that any responsive documentation potentially violates their right to privacy, Defendant will stipulate that this information shall be designated as confidential under the parties' Protective Order. *See Phillips ex rel. Ests. Of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002) (courts have consistently granted protective orders that prevent disclosure of information, including medical and psychiatric records confidential under state law).

Plaintiffs allege that all minor Plaintiffs and D.T. began to express that they were the opposite sex as early as one-and-a-half years old. (*Id.* at ¶¶ 59, 87, 95, 104.) Defendant agrees to limit this request from the age of two to the present. Given the minor Plaintiffs' and D.T.'s ages and these allegations, all records from two years old to the present are relevant and proportional to the needs of this case.

This information is relevant and necessary to take the depositions of Plaintiffs' parents and Lizette Trujillo. Please produce all documentation responsive to this request. Alternatively, Defendant has included blank releases for Plaintiffs and D.T. to execute and return so that Defendant may subpoena these entities for these records.

ROG No. 2:

ROG No. 2 requests the total number of transgender minors who are members of, involved in, and/or otherwise associated with SAGA, Families Transformed Support Group, and AZTYPO, and the total number of transgender minors whose births are registered in Arizona. Plaintiffs responded only with respect to the Families Transformed Support Group, in contravention of Fed. R. Civ. P. 33(b)(3), and identified only the number of "young people" associated with that Group. Plaintiffs failed to indicate whether they were withholding this information and the basis for any objection, and thus any objection is waived. Fed. R. Civ. P. 33(b)(4); *see also Richmark*, 959 F.2d at 1473.

This information is directly relevant and proportional to Rule 23's numerosity requirement to determine whether individuals in these groups are members of the putative Class. In addition, Defendant is entitled to verify whether individuals in these groups have birth certificates in the State of Arizona.

Asaf Orr
December 10, 2021
Page 13

Accordingly, please supplement this response to include the requested information with respect to SAGA and AZTYPO, and supplement your response to include the number of “transgender minors” associated with Families Transformed Support Group.

ROG Nos. 3, 4, and 12:

Ms. Trujillo’s Declaration states that she has spent a “significant portion of time” speaking with families about the “barriers” transgender people face because Arizona “requires proof of surgery to amend the sex listed on a birth certificate through ADHS’s private administrative process.” (Dkt. 89-01, at ¶¶ 7-8.) She claims that many families in SAGA and/or Families Transformed have children that are too young to undergo surgical treatment and cannot use ADHS’s administrative process, and that these families “are also concerned about—or unwilling to pursue—a court order correcting that information” due to privacy concerns. (*Id.* at ¶ 9.)

ROG No. 3 requests that Plaintiffs provide the identities of all individuals and/or families that are members of, involved in, and/or otherwise associated with these groups whom Lizette Trujillo claims have expressed that they are concerned about, unwilling to, or cannot pursue a court order correcting or amending the birth certificate of a minor child, and to identify the minor child(ren) and their date(s) of birth.

Next, Ms. Trujillo’s Declaration states that she “regularly communicates” with parents from AZTYPO, and that “many of the families connected with AZTYPO would like to amend the sex listed on their child’s birth certificate through the administrative process but are prevented from doing so due to the surgical requirement.” (*Id.* at ¶ 10.)

ROG No. 4 requests that Plaintiffs provide the identities and dates of birth for all individuals and/or families that are members of, involved in, and/or otherwise associated with AZTYPO as referenced in her Declaration.

Ms. Trujillo also claims that, through her work with Families Transformed and SAGA, she has “spoken with and heard stories of many transgender adults who are unable to amend the sex listed on their birth certificates due to ADHS’s surgical requirement.” (*Id.* at ¶ 11.)

ROG No. 12 expressly refers to Paragraph 11 of Ms. Trujillo’s Declaration. It requests that Plaintiffs identify *any and all* individuals that Ms. Trujillo has spoken to and/or heard stories of as referenced.

ROG Nos. 3, 4, and 12 relate specifically to information contained in Ms. Trujillo’s Declaration. Plaintiffs refused to provide a response to any of these interrogatories, despite relying on the assertions in Ms. Trujillo’s Declaration in their Motion for Class Certification to show that there is sufficient numerosity to certify the class. (Dkt. 89 at 6.) As repeatedly stated, none of the assertions in Ms. Trujillo’s Declaration are backed by verifiable evidence. Merely talking to families and individuals and hearing “stories” about others is simply not enough to establish the requirements under Rule 23. Thus, Defendant is entitled to verify whether the attestations made in

Asaf Orr
December 10, 2021
Page 14

Ms. Trujillo's Declaration are indeed true and are permitted to do so by requesting the identities of all individuals referenced in her Declaration. Plaintiffs failed to indicate whether they were withholding this information and the specific basis for any objection, and thus any objection is waived. Fed. R. Civ. P. 33(b)(4); *see also Richmark*, 959 F.2d at 1473.

To the extent Plaintiffs claim that any responsive documentation potentially violates any individual's right to privacy, Defendant will stipulate that information and documents containing private or sensitive information shall be designated and produced as confidential under the parties' Protective Order. Further, Plaintiffs' objection as to time-period is misleading and improper given that Ms. Trujillo's Declaration did not include any dates, time-periods, or limitations to support her assertions. Thus, Plaintiffs should assume that the relevant time-period is the timeframe Ms. Trujillo relied upon in making the assertions in her Declaration, whatever that may be.

Plaintiffs' objection that this request "seeks to impose upon Plaintiffs an obligation to investigate or discover information or materials from third parties and not within the custody and control of the Plaintiffs" lacks merit. Plaintiffs cannot rely on assertions in Ms. Trujillo's Declaration, but then refuse to produce evidence verifying this information under the guise that they do not possess or control it. Ms. Trujillo presumably has knowledge of who she communicated with or heard stories of.

Lastly, Plaintiffs' boilerplate objection that this information may be protected by any applicable medical records, doctor-patient, or psychotherapist-patient privilege is insufficient and inapplicable. Defendant is seeking the identities of individuals referenced in Ms. Trujillo's Declaration. He is not seeking privileged information. *See Trujillo v. Chef's Warehouse W. Coast LLC*, No. 219 CV08370DSFMAAX, 2020 WL 7315346, at *19 (C.D. Cal. Oct. 19, 2020) ("In addition to the general discoverability standards, it has long been the rule that, in class actions, before class certification has taken place, all parties are entitled to equal access to persons who potentially have an interest in or relevant knowledge of the subject of the action, but who are not yet parties.") (quotations omitted).

The identities of all individuals referenced in Ms. Trujillo's Declaration are relevant and discoverable to verify her assertions, which Plaintiffs have relied on, and to depose her. Please supplement Plaintiffs' responses to ROG Nos. 3, 4, and 12 to include the requested information.

ROG Nos. 5 and 6:

ROG Nos. 5 and 6 request that Plaintiffs identify all individuals who responded to the Facebook polls posted by Lizette Trujillo in the Families Transformed and AZTYPO Facebook groups and on the SAGA Facebook page, how many of these individuals currently have minor transgender children whose births are registered in Arizona, and the identities of these minor children and their dates of birth.

Plaintiffs produced the "results" of the respective Facebook polls with the responders' names redacted, but failed to produce any information regarding whether the responders currently

Asaf Orr
December 10, 2021
Page 15

have minor transgender children whose births are registered in Arizona, or the identities of those minor children and their dates of birth. Plaintiffs also failed to indicate whether they were withholding this information and the specific basis for any objection, and thus any objection is waived. Fed. R. Civ. P. 33(b)(4); *see also Richmark*, 959 F.2d at 1473.

Nevertheless, Defendant objects to Plaintiffs' redaction of the Facebook poll respondents' identifying information. It cannot reasonably be disputed that the results of Facebook polls have the potential to be grossly inaccurate and unreliable. Defendant is entitled to verify whether the poll respondents are indeed members of the Proposed Class, including whether the respondents are parents/legal guardians of transgender minors, and whether these individuals are seeking to amend a registered birth certificate in Arizona. This information is directly relevant to Plaintiffs' claims of numerosity, commonality, and typicality.

Finally, Plaintiffs have failed to provide any evidence or support for their assertion that the information sought is protected by "applicable medical records, doctor-patient, or psychotherapist-patient privilege, or the right to privacy in the Arizona Constitution." This objection is boilerplate and insufficient. *See Burlington N. & Santa Fe Ry. Co.*, 408 F.3d at 1149. Defendant stipulates that this information should be designated and produced as confidential under the parties' Protective Order. *Phillips*, 307 F.3d at 1212.

Please supplement Plaintiffs' responses with responsive documents and information.

ROG No. 7:

Please supplement Plaintiffs' response to include how many members of the AZTYPO Facebook group are transgender minors, or are the parents/legal guardians of transgender minors, whose births are registered in Arizona.

This information is directly relevant and proportional to Rule 23's numerosity requirement to determine whether individuals in these groups are members of the putative Class, or parents of members of the putative Class.

ROG No. 8:

Social media accounts for Jane Doe and/or Susan Doe are relevant for all the reasons stated above. Please supplement Plaintiffs' response to include information related to Jane and Susan Doe.

ROG Nos. 9 and 10:

Documentation and/or information related to D.T. is relevant to the defenses in this case for the reasons stated above. Please supplement Plaintiffs' responses to ROG Nos. 9 and 10 to include information pertaining to D.T.

Asaf Orr
December 10, 2021
Page 16

Defendant is unable to adequately conduct depositions until Plaintiffs supplement their responses and produce relevant information. Given Plaintiffs' deficient responses, the 30-day time limitation for the parties to depose Ms. Trujillo and the parents next/friends of the three named Plaintiffs has not yet started to run and will not run until all potential discovery disputes have been resolved and all relevant and discoverable documents have been produced. (*See* Dkt. 100 at 2.)

Sincerely,



Daniel P. Struck

DPS/lh
3947002

cc: Aubrey Joy Corcoran
Patricia LaMagna

ATTACHMENT 5



Barrett Anderson
T: +1 858 550 6161
banderson@cooley.com

Via Email

January 10, 2021

Dana Keene
Struck, Love, Bojanowski, & Acedo PLC
3100 West Ray Road, Suite 300
Chandler, AZ 85226

Dear Dana:

We write to follow up regarding the parties' December 17, 2021 meet-and-confer call concerning Plaintiffs' responses and objections to Defendant's First Set of Requests for Production ("RFPs") and First Set of Interrogatories.

As an overarching matter, Plaintiffs continue to take issue with Defendant's serial efforts to mire this straightforward case in discovery about irrelevant issues and to impose obligations on Plaintiffs that are not proportional to the needs of the case. This litigation is about whether A.R.S. § 36-337(A)(3) violates the Due Process and Equal Protection Clauses of the United States Constitution and whether that question is suitable for resolution on a class-wide basis. Defendant has not remotely justified sweeping requests for discovery about former plaintiffs who are no longer in the case, "full contents and/or downloads of all social media accounts" used by Plaintiffs and their guardians, or records from every day care and school ever attended by Plaintiffs. Nor has Defendant demonstrated any need to comb through "any and all medical records" from Plaintiffs' mental health and medical providers.

Based on Defendant's letter, dated December 10, 2021, and discussions during the meet and confer, it appears that Defendant believes many of these requests are appropriate because they relate to the question of whether "the minor Plaintiffs have suffered the injuries they claim and can adequately represent the class." (Letter at 11.) This view misunderstands the class certification inquiry and the scope of the claims in this case. In a case involving a facially discriminatory statute, "[t]he actions of the defendant need not affect each member of the class in the same manner." *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994) (internal quotation marks omitted). And it "is sufficient for typicality if the plaintiff endured a course of conduct directed against the class." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1119 (9th Cir. 2018).

During the meet and confer, Plaintiff argued that many of the requests are also relevant to Plaintiffs' standing to assert their constitutional claims. That argument lacks merit. First, it is moot; the Court has already rejected Defendant's standing arguments in its order denying Defendant's Motion to Dismiss. (Dkt. 83 at 12–15.) In addition, Plaintiffs do not need to prove psychological and emotional harm to challenge the constitutionality of a statute that violates their constitutional rights. The injury in this case is the state's invasion of Plaintiffs' rights under the Due Process and Equal Protection Clauses of the United States Constitution. See, e.g., *Ne. Fla. Ch. of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). A forensic examination of Plaintiffs' medical history, for example, is not relevant—let alone proportional—to that inquiry.

The cases cited in Defendant's letter are inapt; they concern discovery of medical records in cases where a plaintiff seeks emotional distress damages. Plaintiffs here do not seek any monetary damages—not as individuals or class representatives. Nor do Plaintiffs currently intend to use medical records as exhibits or



Dana Keene
January 10, 2021
Page Two

call their medical and mental health providers as witnesses. Instead, in cases like this one, Plaintiffs are entitled to proffer the testimony of their respective parents and expert testimony that a reasonable transgender person would experience the types of distress and discrimination as a result of not being able to correct the sex listed on their birth certificate due to the barriers imposed by A.R.S. § 36-337(A)(3). As a result, this case—and the related scope of discovery—is far more limited than in an ordinary damages case, such that Defendant is not entitled to Plaintiffs’ health care records.

In addition, Plaintiffs maintain their objections to producing documents and information related to former Plaintiffs D.T. and Jane Doe. Because neither remains a party in the case, information about them is irrelevant to the claims and defenses in this action. Lizette Trujillo’s continued involvement in this case is as a non-party declarant about issues relevant to the numerosity requirement of Rule 23. That she is the mother of a former plaintiff does not entitle Defendant to wide-ranging discovery about her child. Plaintiffs agree that, to the extent there are responsive and non-privileged documents that happen to include information about D.T., Plaintiffs will not withhold those documents on the basis that they also concern D.T. But Plaintiffs will not conduct searches for documents about D.T. or Jane Doe in response to any discovery request, because there is no basis to do so.

We now address certain of Defendant’s specific requests.¹ As you will see, despite the irrelevant and non-proportional nature of the requests, in many cases, Plaintiffs are willing to conduct reasonable searches and inquire as to the existence of certain subsets of documents sought by Defendant.

RFP No. 1: We understand that the only concern Defendant raised with Plaintiffs’ response to this request was with respect to D.T. and Jane Doe. The Plaintiffs are collecting and reviewing documents now and will produce responsive and non-privileged documents on a rolling basis. For the reasons stated above, Plaintiffs will not conduct a search for documents relating to D.T. and Jane Doe.

RFP Nos. 2 and 4; Interrogatory Nos. 1–7 and 12: Plaintiffs are investigating whether the groups or organizations named in Defendant’s requests—the Southern Arizona Gender Alliance (“SAGA”), the Families Transformed Support Group, and the Arizona Trans Youth and Parent Organization (“AZTYPO”)—have organizational documents or other responsive information, and whether those groups will provide that information to Plaintiffs. If Plaintiffs are able to obtain that information, we will review it and determine whether it is responsive.

However, Plaintiffs will not produce information concerning the identities and dates or places of birth of specific individuals involved in these groups because it is not relevant to any matter in dispute. Although Defendant apparently intends to argue that there are so few transgender persons in Arizona that joinder of them is practical and preferable to class treatment, that is not an invitation for Defendant to obtain identifying information about potential putative class members. Establishing numerosity does not require Plaintiffs to identify all of the class members who exist and, conversely, it also does not allow Defendant to demand that Plaintiff provide information about every possible class member that would allow Defendant to question them to determine their possible eligibility. That is especially true in this context, when the non-parties in question have not consented to having their identities revealed to the very government that is discriminating against them and their family members.

¹ This letter addresses the core issues discussed between the parties during the meet and confer, and does not attempt to respond to each and every position that Defendant asserted in the 16-page letter you sent dated December 10, 2021. To the extent this response does not respond to a particular issue raised in that letter, Plaintiffs expressly reserve their rights. Plaintiffs are willing to meet and confer regarding any issues not explicitly addressed in this letter for which Defendant needs a response.



Dana Keene
January 10, 2021
Page Three

Further, disclosure of that identifying information—even if under a protective order—needlessly invades the privacy of non-parties to this case and, depending on how Defendant would intend to use that information, could even violate the constitutional rights that Plaintiffs seek to vindicate on behalf of members of the class. Nor would identifying these individuals be proportional to the needs of the case, where the identities of all class members cannot possibly be determined with the requested information, given that (1) not all transgender people born in Arizona and seeking to correct their birth certificates belong to these groups; and (2) the class includes future transgender people who will be born in Arizona, whose identities are unknowable. Given the above, to the extent there are responsive documents or information in this category, Plaintiffs will produce it with the identifying information of individuals redacted.

RFP No. 3: We understand that Defendant has requested information from the social media records of the named Plaintiffs and their parents. We appreciate Defendant’s willingness to limit the scope of the requested records, but believe the scope is still too broad. In addition to our general objection to producing documents related to Lizette Trujillo/D.T. and Susan/Jane Doe, we object to producing social media records that fall within categories four, six, and seven as outlined in your letter dated December 10, 2021. (See Letter at 7.) While Plaintiffs do not concede that any of their social media records are relevant or proportional, in order to resolve this dispute Plaintiffs will collect and review those accounts, and produce responsive, non-privileged information.

RFP No. 6: We understand that Defendant has requested school records for the named Plaintiffs that concern their experiences as transgender students. Such a request is far narrower than RFP No. 6, which appears to demand all school records, whether relevant or not. Although Plaintiffs do not concede that any of those records are relevant or proportional, given the narrowed scope of the request, Plaintiffs are investigating whether such records exist. If they do, and if Plaintiff is able to obtain them, Plaintiff will review those documents and determine if they are responsive.

RFP No. 7: We understand that Defendant seeks records regarding Plaintiffs’ participation, or lack thereof, in activities since age two. Collecting documents from that broad of a timeframe is too burdensome, nor would those documents be relevant to or proportional to the needs of this case. Again, without conceding that these records are relevant or proportional, Plaintiffs will agree to produce these records starting from the time when each minor Plaintiff began living consistent with their gender identity in their daily lives. Plaintiffs are investigating whether such records exist. If they do, and if Plaintiff is able to obtain them, Plaintiff will review those documents and determine if they are responsive.

RFP No. 8; Interrogatory No. 11: We understand that Defendant has requested medical and mental health information for the named Plaintiffs sufficient to show that they have been diagnosed with or treated for gender dysphoria. Such a request is far narrower than RFP No. 8, which demands all medical records related to “gender dysphoria and/or related conditions.” However, as outlined above, Plaintiffs’ health care records are not relevant to or proportional to the needs of this case, especially given that Defendant has agreed in numerous court filings that he will not dispute that the named Plaintiffs are transgender. In an effort to resolve this dispute, Plaintiffs are willing to provide Defendant with a declaration from a licensed healthcare provider for each minor Plaintiff that attests to the following: (1) the provider has or had a provider-patient relationship with the minor Plaintiff; (2) the provider evaluated the minor Plaintiff and diagnosed them with gender dysphoria; and (3) the minor Plaintiff is receiving clinically appropriate care to treat their gender dysphoria. Please advise if that is acceptable to Defendant.

* * *



Dana Keene
January 10, 2021
Page Four

We are engaging in the process of collecting documents from relevant sources and conducting reasonable searches to find documents responsive to Defendant's requests as narrowed and subject to Plaintiffs' objections. Please let us know if you would like to meet and confer about any of the above issues.

Sincerely,

A handwritten signature in blue ink that reads "Barrett Anderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Barrett Anderson

cc: Counsel of Record

ATTACHMENT 6



STRUCK LOVE BOJANOWSKI & ACEDO, PLC

Dana M. Keene
480.420.1620
dkeene@strucklove.com

February 17, 2022

VIA E-MAIL

Barrett Anderson
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
banderson@cooley.com

Re: *Roe, et al. v. Herrington*, Case No. 4:20-cv-484-JAS
Deficiencies in Plaintiffs' Discovery Responses

Mr. Anderson:

We write in response to your January 10, 2022, correspondence regarding Plaintiffs' deficient discovery responses (as outlined in Defendant's correspondence dated December 10, 2021) and the parties' meet and confer held on December 17, 2021.

Much of Defendant's legal position regarding class discovery has already been set forth in the parties' Joint Status Report on Class Discovery (Dkt. 91) and Defendant need not repeat it here. Plaintiffs must demonstrate that they—and each member of the class—were injured in some way and have standing to pursue their claims. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2206-08. The issue of standing is not moot.

Defendant fundamentally disagrees with Plaintiffs' contention that the Plaintiffs' claimed injuries are irrelevant in this case, and that A.R.S. § 36-337(A)(3), in and of itself, is the constitutional violation giving rise to Plaintiffs' claims. Indeed, Plaintiffs' First Amended Complaint is replete with allegations describing the numerous ways in which the named minor Plaintiffs have been injured *because of* A.R.S. § 36-337(A)(3). Thus, whether the named minor Plaintiffs have suffered injuries and/or emotional distress is wholly relevant to the claims and defenses in this case, and Defendant is not required to merely take Plaintiffs at their word. To claim that discovery into these alleged injuries is irrelevant and disproportionate defies logic. So long as these allegations remain in Plaintiffs' operative complaint, Defendant is entitled to this discovery.

Defendant's request for records and information regarding D.T. and/or Jane Doe remains the same for the reasons outlined in Defendant's December 10, 2021, correspondence.

Mr. Barrett Anderson
February 17, 2022
Page 2

With respect to RFP No. 6, Defendant did not agree to limit this request to only “school records for the named Plaintiffs that concern their experiences as transgender students.” Defendant seeks all records from daycare facilities, preschools, and/or schools attended by the minor Plaintiffs and D.T. from two years old to present.

Nor did Defendant agree to limit the scope of RFP No. 7 to only records starting from the time each minor began living consistent with their gender identity in their daily lives as Plaintiffs have suggested. Plaintiffs specifically allege that the deprivation of accurate birth certificates caused them harm and acted as a barrier to their participation in activities. Defendant is entitled to discover what activities (if any) the minor Plaintiffs participated in prior to them living consistent with their gender identities to demonstrate the extent of the harm alleged.

Finally, a declaration from a “licensed healthcare provider” is not sufficient, and Defendant does not agree to limit RFP No. 8 or Interrogatory No. 11.

At this juncture, and based on the representations in Plaintiffs’ January 10, 2022, correspondence, we believe the parties have reached an impasse on the following:

- The discoverability of documents and/or information related to D.T. and Jane Doe.
- Social media records requested in RFP No. 3.
- Documentation showing group administrators, membership demographics, and/or membership criteria for the Families Transformed and AZTYPO private Facebook groups requested in RFP No. 4.
- Information concerning the identities and dates of birth of individuals involved in SAGA, Families Transformed Support Group, and AZTYPO requested in RFP No. 5.
- Plaintiffs’ school records from the age of two to present requested in RFP No. 6.
- Plaintiffs’ activity records from the age of two to present requested in RFP No. 7.
- Plaintiffs’ medical records from mental health and/or medical providers who provided treatment to Plaintiffs and former Plaintiff D.T. for gender dysphoria and/or related conditions from the age of two to present requested in RFP No. 8 and Interrogatory No. 11.
- Information requested in Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, and 12.

We believe that the parties’ inability to agree on this discovery warrants the Court’s involvement. Per Judge Soto’s original case management Order (Dkt. 7) and the original Scheduling Order (Dkt. 87), the parties are directed to file a motion in compliance with the District of Arizona Local Rules if they are unable to resolve a discovery dispute.

In addition, Plaintiffs have indicated in both their responses to discovery and in the January 10, 2022 correspondence, that they intend to supplement numerous discovery responses. To date, we

Mr. Barrett Anderson
February 17, 2022
Page 3

have not received supplemental responses, or any other document aside from what was initially produced.

We request that Plaintiffs supplement their discovery responses by March 4, 2022. If we do not receive supplemental responses, or the supplemental responses are still deficient, we intend to move forward with a discovery dispute motion on the disputed discovery issues outlined above.

Sincerely,



Dana M. Keene

DMK/cm

ATTACHMENT 7

From: [Anderson, Barrett](#)
To: [Dana Keene](#); [Nick Acedo](#); [Dan Struck](#); [Aubrey Joy Corcoran](#); patricia.lamagna@azag.gov; [Andrea Bartles](#); [Lisa Hamilton](#)
Cc: [Asaf Orr](#); [Colin Proksel](#); [Payslie Bowman](#); [Martin, Christopher L.](#); [Taylor, Jessica L.](#)
Subject: Roe v. Herrington matter - Production 2
Date: Friday, March 4, 2022 8:34:09 PM

Counsel:

This email contains links to a production of documents in response to Defendant's First Set of Requests for Production of Documents. The links are each encrypted, but the files themselves are not password protected. This is the second part of a rolling production. More materials will follow.

Links:

- <https://liquidfiles.cooley.com/link/LeF2blp0FqplmuocE4IGUR>
- <https://liquidfiles.cooley.com/link/9sBU4Yjn4sJAnGE2RyyAfd>
- <https://liquidfiles.cooley.com/link/rg5VD3tckdBSJFrCzo0Fij>
- <https://liquidfiles.cooley.com/link/86KmRV9FEhE5HM3HXj5T>
- <https://liquidfiles.cooley.com/link/IN4Za2MLrZ9oQZo66Q7px4>

Please let us know if you have any questions.

Sincerely,
Barrett

Barrett J. Anderson

Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
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Pronouns: he, him, his

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ATTACHMENT 8
To Declaration of Dana M. Keene
Redacted/Sealed

From: [Anderson, Barrett](#)
To: [Dana Keene](#); [Martin, Christopher L.](#); [Asaf Orr](#); "Colin Proksel"; [Payslie Bowman](#); [Gunn, Patrick](#); [Taylor, Jessica L.](#); [Shriya Bhindwale](#)
Cc: [Patriaic Cracchiolo LaMagna](#); [Aubrey Joy Corcoran](#); [Dan Struck](#); [Nick Acedo](#); [Christie Marsh](#); [Sherri Burns](#); [Andrea Bartles](#)
Subject: RE: Roe v. Herrington - Def's Motion to Compel
Date: Sunday, June 5, 2022 3:27:07 PM
Attachments: [image001.png](#)

Dana:

We must decline your request and object to your proposed subpoenas for several reasons. First, as we have already explained, plaintiffs' mothers requested records from the schools that their children have attended or are attending, and we have produced everything that we received. There is no reason for you to repeat the exercise.

Second, the records we have produced are already more than we were obligated to provide to you. As we stated in Plaintiffs' objections to Defendants' Request for Production No. 6, your unbounded request for "any and all" student records is not relevant or proportional to the needs of this case. Nevertheless, as a courtesy and to get this case moving forward, while not conceding relevance or admissibility, we proceeded to request and produce all of these records anyway.

Third, in addition to being entirely unnecessary, requesting records from these schools by subpoena risks revealing the plaintiffs' involvement in this litigation and thus disclosing their transgender status to school staff and others who have no need to know, or otherwise bringing unwanted attention to these young children in their school environments. We strenuously object to you proceeding in a manner that brings yet further risks to our clients, in addition to those dangers occasioned by Defendant's enforcement of the discriminatory law at issue.

Fourth, we produced all of the school records on March 4, 2022, which was three months ago. The fact discovery cutoff is June 24, 2022, less than three weeks from today. It is confounding that you are just now raising this issue at the tail end of the court's schedule for discovery, when you could and should have raised it much earlier. As we have previously explained, further delay of the case is unwarranted (especially for unnecessary reasons) and we would object to any subpoenas that you issue now as untimely.

Fifth, Helen Roe was accepted to, but never attended, **Redacted**. That is why **Redacted** is not listed in Plaintiffs' response to Defendants' Interrogatory No. 9, which asked only for those schools that plaintiffs *attended*. Thus, there is no reason to subpoena that school.

Finally, we do not fully understand your comment that you find the completeness of the records we produced to be "questionable." The plaintiff mothers requested all of their children's records and you have received all of the records that we did. You may not be aware, but schools do not often retain records for long after a student enrolls elsewhere; rather, schools typically send all the student's records to the student's new school or destroy them soon after.

We trust that the above will suffice to put this matter to rest. We urge Defendant to redirect his

focus on the threshold issue in dispute: whether Defendant has an exceedingly persuasive justification for the discriminatory law at issue in this case, an issue on which he bears the burden of proof and production.

We still await your confirmation of deposition dates for the plaintiff mothers and Lizette Trujillo.

Sincerely,
Barrett

From: Dana Keene <dkeene@strucklove.com>

Sent: Friday, June 3, 2022 7:13 AM

To: Martin, Christopher L. <cmartin@cooley.com>; Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AOrr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

[External]

Chris,

With respect to the minor Plaintiffs' school records, we find it questionable that the majority of schools attended by these children have either no record of them at all, or only have random and incomplete records. We would like to subpoena these schools for the minor Plaintiffs' complete school records, and we would like to obtain a release from Plaintiffs' parents to accompany those subpoenas. We have attached authorizations for the release of these records, and we ask that Plaintiffs' parents fill in the their child's social security number, execute them, and return them so that we can serve these subpoenas. We will provide all records to you once we receive them.

In addition, and based on the records provided by Plaintiffs, it appears that Helen Roe is now attending **Redacted**. We have included a release for that school, as well.

Dana

From: Martin, Christopher L. <cmartin@cooley.com>

Sent: Wednesday, June 1, 2022 9:22 PM

To: Dana Keene <dkeene@strucklove.com>; Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AOrr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

Dana,

I'm writing in response to your request for clarification about the nature of Plaintiffs' search for documents potentially responsive to Defendant's Request for Production Nos. 6 and 7.

Request for Production No. 6

Request for Production No. 6 seeks "any and all records from daycare facilities, preschools, and/or schools attended by the minor Plaintiffs and former minor Plaintiff D.T. identified in Plaintiffs' response to Interrogatory No. 9 from the date of their birth to present." Plaintiffs objected to this request on a number of grounds, including that it is overbroad, unduly burdensome, and not proportional to the needs of the case. *See* Pls.' Responses and Objections dated November 8, 2021. During a meet and confer on December 17, 2021, Defendant clarified that he was seeking school records for Plaintiffs that concern their experiences as transgender students. *See* Jan. 10, 2022 Ltr. from B. Anderson to D. Keene. Without conceding their relevance, Plaintiffs agreed to investigate whether such records exist. *Id.*

Following the December 17, 2021 meet and confer, Plaintiffs' parents and/or Plaintiffs' counsel contacted each of the schools Plaintiffs listed in response to Interrogatory No. 9 and requested all available school records. (For clarity, Plaintiffs' counsel did not contact the "Redacted" Redacted Redacted or take any steps with respect to Redacted Redacted Redacted). All documents provided by the schools in response to these voluntary requests were produced by Plaintiffs to Defendant in this litigation. To the extent there are no documents from a particular school listed in response to Interrogatory No. 9 in Plaintiffs' production, Plaintiffs did not receive any documents from that school.

Your email highlights that Plaintiffs' production did not include any of Carl Voe's records from Redacted Redacted. We can confirm that Carl Voe's parent contacted each of those schools and was informed that no records are available.

Request for Production No. 7

Request for Production No. 7 seeks "all documents showing each minor Plaintiffs' and former minor Plaintiff D.T.'s participation in and/or attempted participation in all activities . . . identified in response to Interrogatory No. 10 from the date of their birth to present." Plaintiffs also objected to this request on numerous grounds, including that it is overbroad, unduly burdensome, and not proportional to the needs of the case. *See* Pls.' Responses and Objections dated November 8, 2021. During the December 17, 2021 meet and confer, Defendant clarified that he was seeking documents regarding Plaintiffs' participation, or lack thereof, in activities since age two. Without conceding relevance or agreeing that the request was proportional, Plaintiffs agreed to "produce these records starting from the time when each minor Plaintiff began living consistent with their gender identity in their daily lives." *See* Jan. 10, 2022 Ltr. from B. Anderson to D. Keene.

To search for documents potentially responsive to Request for Production No. 7, as limited by the parties' meet and confer communications, Plaintiffs' counsel applied relevant activity-related search

terms to emails and other documents collected from each of the Plaintiffs' parents and reviewed documents that hit on those search terms for responsiveness. For example, Plaintiffs' counsel ran search terms including ("swim" or "swimming"), "camp," ("cross country" or "running") and ("ballet" or "dance") across Rachel Voe's collected emails. *Compare* Specific Response to Interrogatory No. 10, Pls.' Responses and Objections dated November 8, 2021 (disclosing Carl Voe's attempted activities as swim team, cross country, and ballet). Plaintiffs' counsel undertook a similar process with respect to each of the Plaintiffs' mothers, all of whom are document custodians in this case.

Finally, you have asked for confirmation that "the documents produced in response to RFP No. 7 constitute all documents responsive to this request in your clients' possession." What we can confirm is that we have conducted a reasonable and diligent search for documents responsive to this request, as described above, and produced responsive, non-privileged documents. That is what Rule 26 requires.

Please let us know if you have any further questions about Plaintiffs' productions in response to Request for Production Nos. 6 and 7.

Chris

Christopher L. Martin, Jr.

Cooley LLP
+1 212 479 6484 office
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From: Martin, Christopher L.

Sent: Friday, May 27, 2022 2:02 PM

To: 'Dana Keene' <dkeene@strucklove.com>; Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

Dana,

Acknowledging receipt of this email. We will be in a position to respond by the middle of next week.

Have a nice Memorial Day weekend all.

Chris

Christopher L. Martin, Jr.

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+1 212 479 6484 office
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From: Dana Keene <dkeene@strucklove.com>
Sent: Friday, May 27, 2022 11:24 AM
To: Martin, Christopher L. <cmartin@cooley.com>; Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>
Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>
Subject: RE: Roe v. Herrington - Def's Motion to Compel

[External]

Counsel,

We are following up on our e-mail, below.

Thank you,
Dana

From: Dana Keene
Sent: Friday, May 20, 2022 12:11 PM
To: Martin, Christopher L. <cmartin@cooley.com>; Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>
Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>
Subject: RE: Roe v. Herrington - Def's Motion to Compel

Counsel:

Defendant's RFP No. 6 requests that Plaintiffs produce any and all records from daycare facilities, preschools, and/or schools attended by the minor Plaintiffs. Defendant is requesting this information from two years of age to present.

Plaintiffs presumably provided a complete list of all daycares, preschools, and/or schools attended by James Poe, Helen Roe, and Carl Voe in response to Interrogatory No. 9. Plaintiffs then produced some school records, including enrollment records, report cards, and email communications between the minor Plaintiffs' parents and teachers and school administrators at their respective schools. It is clear that the documents produced do not constitute complete records. Nor were any

records produced from certain schools. For example, none of Carl Voe's records were produced from **Redacted**. There were some email communications produced between Carl Voe's parents and administrators from **Redacted** but nothing else.

In an effort to avoid a motion to compel on this particular issue, we are requesting that Plaintiffs outline the efforts undertaken to obtain all school records from all of the daycares, preschools, and/or schools listed in response to Interrogatory No. 9. We are also requesting confirmation that the documents produced constitute all documents in your clients' possession. Alternatively, we are willing to provide your clients with authorizations for the release of these records so that we can obtain them ourselves.

Similarly, Defendant's RFP No. 7 requests that Plaintiffs produce all documents showing each minor Plaintiffs' participation in and/or attempted participation in all activities identified in Plaintiffs' response to Interrogatory No. 10 from the age of two to present.

Again, Plaintiffs produced some documents and email communications for some of the activities listed in response to Interrogatory 10, but not all. Please outline the efforts undertaken to obtain records responsive to this Request. Please also confirm whether the documents produced in response to RFP No. 7 constitute all documents responsive to this Request in your clients' possession. We are also willing to provide releases for these records.

To be clear, we do not intend to move to compel documents that were already requested by your clients and were found to not exist. We simply need to know whether other documents exist, and whether the documents produced are incomplete. We are entitled to this information.

Thank you,

Dana

From: Martin, Christopher L. <cmartin@cooley.com>

Sent: Thursday, May 12, 2022 11:06 AM

To: Dana Keene <dkeene@strucklove.com>; Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

Dana:

We do not appreciate, and strongly disagree with, your characterization of our attempts to understand, respond to, and attempt to resolve the discovery issues you raised as "gamesmanship"

and taking “disingenuous” positions in discovery.

As we have explained, we do not believe there is any basis under the Federal Rules for your demand that we describe or summarize our production in the way you have asked. Your view appears to be based solely on the general principle that incomplete discovery responses must be supplemented under Rule 26, which no one disputes. We have cited specific Ninth Circuit authority that there is no obligation to “identify all of the documents Plaintiffs have produced” in a supplemental disclosure statement or supplemental responses and objections. That authority is fully consistent with the advisory committee notes to Rule 26, which only further underscores that we are under no obligation to do what you ask. Nonetheless, in an effort to bridge the gap between the parties and avoid unnecessarily escalating a discovery dispute to Judge Soto, we have agreed on a voluntary basis to supplement our document request responses with Bates numbers of produced documents and intend to do so by tomorrow. We are simply asking you to do the same as a matter of courtesy and reciprocity, which should not be controversial.

We disagree that there is any ambiguity about what documents we have agreed and not agreed to produce—and those that are or are not in Plaintiffs’ possession, custody, or control—in response to Defendant’s document requests. Nor do we believe there is any ambiguity about the information we have agreed and not agreed to provide in response to Defendant’s interrogatories. After we served responses and objections to your document requests and interrogatories, we met and conferred with you several times and explained in written correspondence what documents and information we believed are outside the scope of discovery in this case. We do not believe that we left you with any misimpression about what we were doing. You wrote in a February 17, 2022 letter that you believed we were at impasse as to numerous of Defendant’s discovery requests. You understood then what our positions were, and those positions have not changed.

If, after reviewing Plaintiffs’ responses and objections to Defendant’s discovery requests and the meet and confer correspondence, you believe there is an ambiguity as to whether Plaintiffs have agreed to search for and produce certain categories of documents or to provide additional information in response to Defendant’s interrogatories, please bring specific requests and categories of documents to our attention, and we will provide clarification. It is simply not possible for us to respond to general accusations that Plaintiffs’ responses to more than fifteen separate discovery requests are “deficient, incomplete and/or evasive.”

Finally, we have no objection to your request for an additional 30 days to review the documents Plaintiffs have produced before Defendant takes the depositions of Plaintiffs and Ms. Trujillo. We will obtain our clients’ and Ms. Trujillo’s availability in June and come back to you as soon as possible.

Chris

Christopher L. Martin, Jr.

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From: Dana Keene <dkeene@strucklove.com>

Sent: Monday, May 9, 2022 12:35 PM

To: Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AOr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

[External]

Barrett,

At this point, we find Plaintiffs' position regarding the supplementation of their discovery responses to be disingenuous and evasive. We will not barter in exchange for supplemental responses, particularly because Plaintiffs' continuing duty to supplement their responses under the Federal Rules of Civil Procedure is in no way contingent on what Defendant does or does not agree to do. This is gamesmanship, and it's improper.

We have continually made Plaintiffs aware of their deficient responses, and we have requested supplementation from Plaintiffs for months. We disagree that Plaintiffs have taken "clear" stances on discovery topics. To the contrary, Plaintiffs' discovery responses are vague and noncommittal as to whether Plaintiffs would or would not produce most of the requested information. The only "clear" stance we believe Plaintiffs have taken is contained in their January 10, correspondence where they state they are not producing documents with respect to D.T., Plaintiffs' medical records, and names and dates/places of birth of individuals who may be members of the putative class. Aside from that, Plaintiffs' January 10, correspondence, as well as Plaintiffs' counsel's representations at various meet and confers, left us under the impression that Plaintiffs were conducting searches and would produce relevant information in response to most of Defendant's requests. Significantly, Plaintiffs have continually indicated that their production was "rolling" and that more documentation and information was still forthcoming.

On April 28, Plaintiffs produced approximately 2,400 pages of documents, which significantly exceeds Plaintiffs' two other "rolling" productions to date. Defendant is in the process of determining whether the majority of documents produced are responsive to Defendant's discovery requests, and it remains unclear whether the documents produced constitute complete records.

Nevertheless, we have waited for this documentation and information in good faith for months. And, given Plaintiffs' continued representations, we have held off on bringing these issues to the Court in the belief that a motion to compel would be premature. Plaintiffs are now attempting to manipulate this situation to suggest that they have been forthright throughout this entire process, that their positions have been clear, and that Defendant has been dilatory when the opposite is true.

In one final, good-faith effort to resolve these issues, below is a list of interrogatories and requests for production to which Plaintiffs have provided deficient, incomplete, and/or evasive responses for the reasons stated in Defendant's correspondence dated December 10, 2021, and in numerous correspondence on this issue since then.

- Request for Production No. 1
- Request for Production No. 2
 - Request for Production No. 3
 - Request for Production No. 4
 - Request for Production No. 6
 - Request for Production No. 7
 - Request for Production No. 8
 - Interrogatory No. 1
 - Interrogatory No. 2
 - Interrogatory No. 3
 - Interrogatory No. 4
 - Interrogatory No. 5
 - Interrogatory No. 6
 - Interrogatory No. 7
 - Interrogatory No. 9
 - Interrogatory No. 10
 - Interrogatory No. 11
 - Interrogatory No. 12

Please note we are withdrawing Requests No. 1 and 3 and Interrogatories No. 1 and 8 to the extent they seek any information or documentation from Jane Doe and/or Susan Doe.

As previously stated, please identify all of the documents Plaintiffs have produced in a supplemental disclosure statement and in supplemental responses to Defendant's First Set of Requests for Production. Our continued review of Plaintiffs' most recent document production shows that it is not clear what Plaintiffs have produced or why, let alone to what discovery request the majority of these documents respond to. Please provide complete responses to all requests and interrogatories. If certain documents or information requested does not exist, or if Plaintiffs do not have possession of it, please so state so that we may ascertain what Plaintiffs do and do not have. A boilerplate objection does not suffice. If you do not do this, we will be forced to ask the Plaintiffs to identify the various documents produced at their depositions, which will significantly increase the amount of time it will take to depose them.

As an example, Plaintiffs have provided what appears to be a complete response to Interrogatory No. 10 only with respect to the named Plaintiffs. Plaintiffs' response to RFP #7 remains unchanged and does not provide a substantive response. Plaintiffs' most recent production contains some correspondence showing that the minor Plaintiffs *may have* participated in some (but not all) of the activities listed in response to Rog #10. Please supplement RFP #7 to showcase the documents (including bates numbers) that are responsive to this request. Please also state whether the documents produced constitute all documents that are in Plaintiffs' possession.

We will wait until Friday, May 13th for Plaintiffs' supplemental responses to Defendant's First Set of Requests for Production of Documents and First Set of Interrogatories. If we do not receive them, we intend to move to compel what we deem is outstanding.

In addition, we will need an additional 30 days to review and organize the records Plaintiffs produced prior to taking the depositions of Plaintiffs and Ms. Trujillo. We believe this is the least Plaintiffs can agree to given that they produced almost 2,400 pages of documents—without telling us what they are—a little over a week ago.

Dana

From: Anderson, Barrett <banderson@cooley.com>

Sent: Friday, May 6, 2022 5:20 PM

To: Dana Keene <dkeene@strucklove.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

Dana:

We disagree with many aspects of your email, but propose a compromise below.

With respect to supplementing Plaintiffs' responses to Defendant's requests for production, we do not agree that the Federal rules require what you are asking. "Parties need not serve formal supplemental responses when the new or corrected information is disclosed through the discovery process." *Undeafated, Inc. v. UNCL, LLC*, 2013 WL 12142961, at *2 (C.D. Cal. Apr. 17, 2013); *see also* Fed. R. Civ. P. 26(e)(1) Advisory Committee Note ("There is . . . no obligation to provide supplemental or corrective information that has been otherwise made known to the parties in writing or during the discovery process . . ."). "The plain language of Rule 34 does not require the responding party to identify each responsive document in its written response to each document request." *Rutherford v. PaloVerde Health Care Dist.*, 2014 WL 12633523, at *3 (C.D. Cal. Apr. 25, 2014); *see also Eclipse Grp. LLP v. Target Corp.*, 2017 WL2692883, at *6 (S.D. Cal. June 21, 2017) (denying "requests to require Plaintiff to identify which documents are responsive to which RFPs"). That is particularly true here, given that Plaintiffs have added Bates number prefixes to their productions that identify the source of the documents and provided metadata where available to make documents searchable. This allows Defendant to easily target specific subsets of documents responsive to each of his nine requests for production.

Nevertheless, in an effort to resolve this issue, Plaintiffs will supplement their document request responses with Bates numbers if Defendant likewise confirms that he will provide this information when he produces documents from his ESI searches, which Plaintiffs anticipate will also number in the thousands.

Plaintiffs do not agree, however, that any such supplement would re-start Defendant's 30-day clock

for depositions. There is nothing in such a supplement that would assist you in preparing for a deposition. Again, we remain open to a reasonable request for more time, should you require it. But your email simply says you will need “more time.” It does not state a reason that Defendant cannot review the documents within the time frame provided by the Court, or provide an estimate of how much time you will need. Please provide both so that we can have a meaningful discussion of this issue.

With respect to interrogatory responses and initial disclosures, your email does not state what you believe is incomplete. We believe that Plaintiffs’ long-standing positions on Defendant’s discovery requests provides all the information you requested or is otherwise required by the rules. If you disagree, then to avoid any further back-and-forth on this issue, could you please identify which interrogatories or disclosures you believe need supplementing? This will help us better understand Defendant’s position and respond.

Finally, we note that your email incorrectly suggests that Plaintiffs’ discovery responses are only “partial” or that Defendant is somehow unaware of the scope of the documents and information that Plaintiffs have agreed to produce and not produce. Not so, as explained in our letter dated May 2, 2022. Plaintiffs have been clear since we served our objections and responses to all of Defendant’s discovery requests, the parties engaged in multiple rounds of letters and meet and confers about those positions, and those clear positions have not changed to this day. There is nothing “partial” about Plaintiffs’ responses and there is no duty to supplemental responses when they have not changed. Ultimately, Defendant has known Plaintiffs’ complete positions on all of his discovery requests for over six months, shown most clearly by his statement on February 17 that he was prepared to move to compel. Yet Defendant did not pursue that proposed motion and remained silent while Plaintiffs—as we stated we would—conducted a reasonable search and collected, reviewed, and produced thousands of documents. Defendant’s proposed motion to compel is thus now untimely and unreasonable.

Sincerely,
Barrett

From: Dana Keene <dkeene@strucklove.com>

Sent: Thursday, May 5, 2022 6:17 AM

To: Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

[External]

Barrett,

We have started (but have not completed) our review of the records Plaintiffs produced on April 28th. While some records are identifiable and are obviously responsive to particular Requests for Production (for instance, school records), other records are not. We are now tasked with not only reviewing these documents (which, as you have continuously pointed out, number in the thousands), but we must also determine what documents are responsive to each of Defendant's requests for production.

As we have stated previously, Plaintiffs have a continuing duty to supplement their disclosure statement and discovery responses. Aside from supplementing their response to a single interrogatory, they have not done so.

Similarly, Plaintiffs have a duty under Rule 34 to respond to discovery requests by identifying which documents are responsive to each request. *See Primack v. Ohio Sec. Ins. Co.*, 2019 WL 11795559, at *2 (D. Nev. Jan. 23, 2019) ("Parties are required to identify responsive documents in a manner adequate to permit the party receiving discovery to identify and locate which documents are responsive to which requests."); *Espinoza v. Ryan*, 2020 WL 6106143, at *3 (D. Ariz. Jan. 24, 2020) (in granting defendant's motion to compel, the court instructed that "[i]t is generally not sufficient to simply produce a 'stack of documents' and leave it to Defendants to discern which documents relate to which request" and plaintiff was ordered that his responses to requests for production must specifically identify for each request which documents were offered in response); *Mancini v. Ins. Corp. of New York*, 2009 WL 1765295, at *5 (S.D. Cal. June 18, 2009) (ordering plaintiffs to respond to the document requests by providing a specific list of documents that are responsive to each request and finding that, "[w]hile it may be burdensome for Plaintiffs to review the entire universe of documents to ascertain which documents are responsive to the document requests, it would be even more burdensome for [defendant] to guess which documents are responsive to which requests."); *see also Tuggle v. City of Tulare*, 2021 WL 765723, at *5-6 (E.D. Cal. Feb. 26, 2021) ("Defendants are entitled to individualized complete responses to each of the requests, as numbered and identified in the requests, accompanied by production of each of the documents responsive to the request, regardless of whether the documents have already been produced.")

In addition, Plaintiffs have a duty under Rules 33 and 34 to answer each interrogatory and request completely and fully, setting forth the documents/information that exists and is being produced, the documents/information that does not exist, the documents/information that is not in their custody and control, and the documents/information that is being withheld. Fed.R.Civ.P. 34(b)(2)(B)-(C) and 33(b)(3)-(4); *see also Fay Avenue Properties, LLC v. Travelers Property Casualty Company of America*, 2014 WL 12570974, at *2 (S.D. Cal. July 1, 2014) (a party cannot combine its objections into a partial response without any indication that the response was actually a partial response.); *see also Trujillo v. Princess Cruise Lines, Ltd.*, 2021 WL 3604518, at *3 (C.D. Cal. Apr. 23, 2021) ("If a party is unable to supply the requested information, the party may not simply refuse to answer, but must state under oath that he is unable to provide the information and set forth the efforts he used to obtain the information.").

Plaintiffs' responses to Defendant's First Set of Requests for Production of Documents and First Set

of Interrogatories are quite obviously incomplete, and we request that Plaintiffs supplement these responses, particularly to reflect what documents are responsive to each request for production. Supplemental responses will also assist us in determining whether a discovery dispute still exists on the numerous issues previously mentioned.

Please confirm immediately whether Plaintiffs are refusing to supplement their disclosure statement and responses to Defendant's discovery requests. If Plaintiffs are refusing to do so, we will need more than 30 days to review these records, to determine whether the parties' various discovery disputes still exist, and to depose the Plaintiffs and Ms. Trujillo.

Dana

From: Anderson, Barrett <banderson@cooley.com>

Sent: Tuesday, May 3, 2022 8:36 PM

To: Dana Keene <dkeene@strucklove.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: RE: Roe v. Herrington - Def's Motion to Compel

Dana:

This email responds to yours dated April 28 and May 3, 2022. You requested that Plaintiffs supplement their discovery responses and initial disclosures.

With respect to discovery responses, we today served a revised supplemental response to Defendant's interrogatories. Because of a Microsoft Word auto-updating feature, the supplement that we provided on April 28 inadvertently listed the wrong interrogatory number; our revised supplement corrects that error. Further, although we do not believe we were obligated to do so, as a courtesy we also used the bold/italicize formatting that you proposed. The information within the supplemental response did not change, but we will agree to consider this revised response the "last written response" contemplated in the Court's order.

Otherwise, for the remainder of your requests regarding the discovery responses, we are unaware of any rule of procedure or other requirement that obligates Plaintiffs to proceed in the manner that you outline. Could you send us any authority on which you are relying? We will review it and consider whether a supplemental response is warranted.

With respect to Plaintiffs' initial disclosures, as you are aware, those disclosures expressly incorporated *inter alia* "[a]ll discovery, documents, communications, or other information that is produced, served, exchanged, or filed in this matter" and "[d]ocuments containing information

regarding the need of Plaintiffs Helen Roe, James Poe, and Carl Voe for birth certificates that accurately reflect their sex.” Could you be more specific about what information that you believe requires further disclosure?

Overall, we note that Plaintiffs produced 4,132 documents and, for the parties’ convenience, Plaintiffs applied different Bates number prefixes for each of the Plaintiffs’ mothers, their schools, Ms. Trujillo, AZTYPO, SAGA, and ADHS. These documents should be reviewable within the 30-day period provided by the Court with sufficient time left over for the short depositions of the four witnesses that you seek. Despite that, we are willing to consider a reasonable proposal for additional time for the depositions, should you require it.

Sincerely,
Barrett

From: Dana Keene <dkeene@strucklove.com>
Sent: Wednesday, May 4, 2022 12:22 AM
To: Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>
Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>
Subject: RE: Roe v. Herrington - Def's Motion to Compel

[External]

Barrett,

Do Plaintiffs intend to serve a supplemental disclosure statement or supplement their responses to Defendant’s First Set of Requests for Production of Documents?

From: Anderson, Barrett <banderson@cooley.com>
Sent: Monday, May 2, 2022 9:42 PM
To: Dana Keene <dkeene@strucklove.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>
Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>



Barrett Anderson
T: +1 858 550 6161
banderson@cooley.com

Via Email

May 2, 2022

Dana Keene
Struck, Love, Bojanowski, & Acedo PLC
3100 West Ray Road, Suite 300
Chandler, AZ 85226

Re: Defendant's motion to compel in *Roe, et al. v. Herrington*, No. CV-20-00484-TUC-JAS

Dear Dana:

We write in response to your email dated April 26, 2022, concerning Defendant's proposed motion to compel. As you know, Plaintiffs provided their last production on April 28, 2022, and, as part of that effort, Plaintiffs (as they stated they would) performed a reasonable search and review in response to certain of Defendant's document requests. In total, Plaintiffs produced 4,132 documents that total 38,476 pages.¹ Plaintiffs anticipate that most of the concerns outlined in your April 26 email are resolved by this production.

To be clear, Plaintiffs reiterate the objections they voiced in their letter dated January 10, 2022. Defendant has not explained or justified the inordinately burdensome demands he has heaped on Plaintiffs and their families, who are simply individuals seeking justice from the enforcement of an unconstitutional and discriminatory law that harms many transgender people in Arizona. And, as Plaintiffs have noted several times before, the claims in this case present nearly pure issues of law—on which Defendant holds the vast majority of relevant documents and information. Regardless, Plaintiffs made a good-faith effort to locate and produce nonprivileged information that is responsive to Defendant's requests.

Plaintiffs' positions on all of Defendant's discovery requests have been clear now for months. It is far too late for Defendant to demand anything more. As you observe in your email, Plaintiffs first provided their positions in the objections and responses they served on November 8, 2021. Plaintiffs further explained those positions in their January 10 letter, including that they (1) would conduct a reasonable search and review in response to some document requests, but (2) would not produce documents in response to others. Plaintiffs plainly stated their positions; they have not changed.

Defendant had no trouble understanding those positions. By letter dated February 17, 2022, you stated that Defendant would move to compel if he was not satisfied with Plaintiffs' responses as of March 4, 2022. Plaintiffs did not change their positions; Defendant did not move to compel. Nearly two months have now passed since March 4, during which Plaintiffs undertook a considerable effort—greatly disruptive to their personal lives—to collect, review, and produce thousands of documents. Defendant cannot ask Plaintiffs to engage in this burdensome process yet again and incur additional costs that are (now even more) unjustified and remain disproportionate to the needs of this case when he had the opportunity to bring these issues to the Court over eight weeks ago but chose not to do so.²

¹ This is in comparison to the 32 documents totaling only 384 pages that Defendant has so far produced.

² Defendant's silence contrasts starkly with Plaintiffs' repeated efforts to obtain clarity from Defendant on the proposed date ranges, search terms, and custodians for Defendant's production of electronically stored information ("ESI") in response to Plaintiffs' discovery requests. Defendant's delay in even searching for



Dana Keene
May 2, 2022
Page Two

Defendant has received all that he is entitled to receive in response to his discovery requests. It is time for Defendant to depose the four witnesses he claims he must depose before he can oppose Plaintiffs' long-pending class certification motion and thereby allow the case to proceed without further unnecessary delay. We stand ready to meet and confer with you to make that possible.

Sincerely,

A handwritten signature in blue ink that reads "Barrett Anderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Barrett Anderson

cc: Counsel of Record

ESI in response to Plaintiffs' requests, let alone reviewing or producing any, is fully documented in our letter dated April 28, 2022, and need not be recounted here.

Subject: RE: Roe v. Herrington - Def's Motion to Compel

Counsel:

Correspondence attached.

Sincerely,
Barrett

From: Dana Keene <dkeene@strucklove.com>

Sent: Wednesday, April 27, 2022 12:50 AM

To: Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; 'Colin Proksel' <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Shriya Bhindwale <sbhindwale@nclrights.org>

Cc: Patriaic Cracchiolo LaMagna <patricia.lamagna@azag.gov>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Christie Marsh <CMarsh@strucklove.com>; Sherri Burns <sburns@strucklove.com>; Andrea Bartles <abartles@strucklove.com>

Subject: Roe v. Herrington - Def's Motion to Compel

[External]

Counsel:

Defendant served interrogatories and requests for production of documents on September 23, 2021, and Plaintiffs served their responses on November 8, 2021. In response to Defendant's First Set of Requests for Production, Plaintiffs produced a total of 19 pages of documents consisting of Facebook screenshots of Lizette Trujillo's poll questions on the AZTYPO, SAGA, and Families Transformed private Facebook Groups.

On December 10, 2021, Defendant sent correspondence to Plaintiffs outlining the numerous deficiencies in Plaintiffs' discovery responses, and requested that Plaintiffs supplement their responses and produce additional relevant and responsive documentation. The parties met and conferred on December 17, 2021 regarding Plaintiffs' deficient responses. On January 10, 2022, Plaintiffs sent correspondence providing some objections to Defendant's discovery requests on various grounds. Plaintiffs, however, indicated that despite these objections, they were "willing to conduct reasonable searches and inquire as to the existence of certain subsets of documents sought by defendant." They also indicated they would be collecting and reviewing documents and would produce non-privileged documents on a "rolling" basis.

By letter dated February 17, 2022, Defendant further clarified their discovery requests, and outlined the areas where there appeared to be a discovery dispute. Defendant requested that Plaintiffs supplement their discovery responses by March 4, 2022, and informed Plaintiffs that Defendant would be moving forward with a discovery dispute motion on the disputed issues.

On March 7, Plaintiffs produced documents as part of a second “rolling” production, including corporate bylaws and Articles of Incorporation for AZTYPO and SAGA, which are not responsive to any of Defendant’s requests for production. Plaintiffs also produced some school records for all three minor Plaintiffs, but these records do not appear to be complete.

To date, Plaintiffs have not served a supplemental disclosure statement. Nor have they served supplemental discovery responses. At the parties’ meet and confer on April 19th, Plaintiffs indicated they would be providing Defendant with the final installment of their “rolling” production of documents. Defendant has not received those documents.

Without reviewing Plaintiffs’ third rolling production of documents, Defendant has still not received the following information:

- Documents and/or information related to D.T. and Jane Doe as requested in various discovery requests
- Social media records requested in RFP No. 3
- Documentation showing group administrators, membership demographics, and/or membership criteria for the Families Transformed and AZTYPO private Facebook groups requested in RFP No. 4
- Plaintiffs’ complete school records from the age of two to present requested in RFP No. 6
- Plaintiffs’ activity records from the age of two to present requested in RFP No. 7
- Plaintiffs’ medical records from mental health and/or medical providers who provided treatment to Plaintiffs and former Plaintiff D.T. for gender dysphoria and/or related conditions from the age of two to present requested in RFP No. 8 and Interrogatory No. 11.
- Information requested in Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, and 12.

Defendant has held off on filing a discovery dispute motion or moving to compel this information given Plaintiffs’ continued (albeit vague) representations that they would be producing relevant and responsive information on a rolling basis. It has now been approximately 7 months since Defendant served his discovery requests and a vast amount of information is still outstanding. As we have repeatedly stated, this information is relevant, and we cannot depose Plaintiffs or respond to their Motion for Class Certification until we receive it.

Per Judge Soto’s original case management Order (Dkt. 7) and the original Scheduling Order (Dkt. 87), the parties are directed to file a motion in compliance with the District of Arizona Local Rules if they are unable to resolve a discovery dispute. We intend to file a motion to compel the information and documentation sought in Defendant’s discovery requests as outlined above.

Dana Keene

Dana M. Keene
Attorney

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

3100 West Ray Road | Suite 300 | Chandler AZ 85226

480.420.1620 | dkeene@strucklove.com | STRUCKLOVE.COM

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ATTACHMENT 9

From: [Anderson, Barrett](#)
To: [Dana Keene](#); [Nick Acedo](#); [Dan Struck](#); [Andrea Bartles](#); [Aubrey Joy Corcoran](#); [patricia.lamagna@azag.gov](#); [Christie Marsh](#)
Cc: [Asaf Orr](#); [Colin Proksel](#); [Payslie Bowman](#); [Martin, Christopher L.](#); [Taylor, Jessica L.](#)
Subject: Roe v. Herrington matter - Production 4
Date: Thursday, April 28, 2022 5:17:39 PM

Counsel:

This email contains links to the final production of documents in response to Defendant's First Set of Requests for Production of Documents. The links are each encrypted, but the files themselves are not password protected.

Links:

- <https://liquidfiles.cooley.com/link/NNeEAKSA30gfoXM573SqOt>
- <https://liquidfiles.cooley.com/link/lpFC8b6A5vDCXzSoTjU6yF>
- <https://liquidfiles.cooley.com/link/YIXnMftSfeldmyubURzhk1>
- <https://liquidfiles.cooley.com/link/RLBU2fH7idJ7NcmaplZoms>

Please let us know if you have any questions.

Sincerely,
Barrett

Barrett J. Anderson

Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
+1 858 550 6161 office
+1 858 550 6420 fax
banderson@cooley.com
Pronouns: he, him, his

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ATTACHMENT 10

From: [Colin Proksel](#)
To: [LaMagna, Patricia](#); [Corcoran, Aubrey Joy](#); [EducationHealth@azag.gov](#); [Dan Struck](#); [Nick Acedo](#); [David A. Knopf - Fenix Financial Forensics LLC \("F3"\) \(dknopf@f3az.com\)](#)
Cc: [Asaf Orr](#); [Anderson, Barrett](#); [Martin, Christopher L.](#); [Payslie Bowman](#); [Rebecca Warinner](#)
Subject: Roe v. Herrington - Plaintiffs' Supplemental Response to Defendant's First Set of Interrogatories
Date: Thursday, April 28, 2022 7:43:33 PM
Attachments: [2022-04-08 Trujillo - Pf. Supp. Response to Defendant's First Set of Interrogatories.pdf](#)

Counsel,

Please see the attached. A hardcopy will not follow unless requested.

Best,

Colin

Colin M. Proksel

[Profile](#) | [Add me to your address book](#) 

[2929 North Central Avenue](#)

[21st Floor](#)

[Phoenix, Arizona 85012](#)

Telephone 602.640.9393

Facsimile 602.640.9050

cproksel@omlaw.com

[omlaw.com](#)



ATTACHMENT 11



Barrett Anderson
T: +1 858 550 6161
banderson@cooley.com

Via Email

April 28, 2022

Dana Keene
Struck, Love, Bojanowski, & Acedo PLC
3100 West Ray Road, Suite 300
Chandler, AZ 85226

Re: Plaintiffs' last written response in *Roe, et al. v. Herrington*, No. CV-20-00484-TUC-JAS

Dear Dana:

We write to inform you that Plaintiffs have, as of today, provided their final production of documents and supplemental interrogatory responses to Defendant's discovery requests. These responses therefore constitute the "last written response" referenced in Paragraph (1) of the Case Management Order. (Dkt. 100.) Defendant now has "30 days . . . to take the depositions of Lizette Trujillo and the parents/next friends of the three named Plaintiffs." We stand ready to meet and confer with you regarding deposition locations and scheduling for these four witnesses.

With respect to locations, we can offer Ms. Roe, Ms. Poe, and Ms. Trujillo for deposition at the Osborn Maledon, P.A., offices in Phoenix, Arizona. However, Ms. Voe is located in Baltimore, Maryland. We can offer her deposition at the Cooley LLP offices in Washington, DC or, if Defendant is willing to pay her travel expenses, she will consider traveling to Phoenix, Arizona to be deposed at the Osborn Maledon offices. A remote video deposition for her is also an option.

With respect to scheduling, we note that all four of these mothers have young children who will be finishing their school years in May. Given that these mothers have responsibilities as care providers, we request that you contact us as soon as possible to set dates for the depositions so that we may make the necessary arrangements.

Sincerely,

A handwritten signature in blue ink that reads "Barrett Anderson".

Barrett Anderson

cc: Counsel of Record

ATTACHMENT 12

From: [Dana Keene](#)
To: [Anderson, Barrett](#); [Nick Acedo](#); [Dan Struck](#); [Andrea Bartles](#); [Aubrey Joy Corcoran](#); patricia.lamagna@azag.gov; [Christie Marsh](#)
Cc: [Asaf Orr](#); [Colin Proksel](#); [Payslie Bowman](#); [Martin, Christopher L.](#); [Taylor, Jessica L.](#)
Subject: RE: Roe v. Herrington - Correspondence
Date: Friday, April 29, 2022 1:13:00 PM

Barrett,

This correspondence serves as a response to your April, 28, 2022, letter entitled “Plaintiffs’ last written response in *Roe, et al. v. Herrington*, No. CV-20-00484-TUC-JAS.”

Last night, Plaintiffs produced thousands of pages of documents without providing any explanation as to what the documents are, what they contain, or how they are responsive to Defendant’s discovery requests. Plaintiffs served Supplemental Responses and Objections to Defendant’s First Set of Interrogatories (which supplemented their response to only one interrogatory), but have not supplemented either their disclosure statement or their responses to Defendant’s First Set of Requests for Production of Documents. Defendant is not required to guess what these documents are, nor is he required to guess what discovery requests these documents are responsive to.

Pursuant to Rule 26(e)(1), Plaintiffs have a continuing duty to supplement their disclosure statement and responses to discovery “in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect.” Fed. R. Civ. P. 26(e)(1)(A). The duty to supplement “is a continuing duty, and no additional [discovery requests] by the requesting party are required to obtain the supplemental information – rather the other party has an affirmative duty to amend a prior response if it is materially incomplete or incorrect.” *Fast v. GoDaddy.com LLC*, 340 F.R.D. 326, 335 (D. Ariz. 2022). Similarly, Plaintiffs also have a duty to provide *complete* responses to requests for production under Rule 34(b)(2). Failure to supplement a party’s disclosure statement or responses to discovery requests constitutes sanctionable conduct under Rule 37(c)(1). *See id.* at 335 (“Rule 37(c)(1) authorizes a court to sanction a party for failing to produce information required by Rule 26(a) or (e).”)

Plaintiffs served their Initial Disclosure Statement on September 10, 2021, and have not supplemented this disclosure statement despite producing thousands of pages of documents since then. Plaintiffs served Responses and Objections to Defendant’s First Set of Requests for Production of Documents on November 8, 2021, but have never supplemented those responses. It goes without saying that Plaintiffs’ disclosure statement and discovery responses are now materially incomplete and/or incorrect. Plaintiffs’ most recent production of documents only underscores the fact that they have failed to meet their obligations under Rule 26(e)(1).

Thus, and contrary to your assertions, the final installment of Plaintiffs’ rolling production of documents does not constitute the “last written response” referenced in Paragraph (1) of the Court’s Case Management Order (Dkt. 100) because Plaintiffs have, to date, failed to supplement their disclosure statement or written responses to Defendant’s Requests for Production of Documents. Accordingly, the thirty-day timeframe to depose Lizette Trujillo and the Plaintiffs has not started and will not begin to run until we receive Plaintiffs’ supplementation. We are not prepared to meet and confer regarding the scheduling of these depositions.

We request that Plaintiffs serve a supplemental disclosure statement identifying all documents produced by Plaintiffs to date. We also request that Plaintiffs serve supplemental responses to Defendant's Requests for Production of Documents and specifically state what documents produced are responsive to each request. When you serve supplemental responses, we request that you insert all supplemental information using bold/italics as Defendant has done so that we can easily identify and reference the supplemental information. The supplemental information contained in Plaintiffs' Supplemental Responses and Objections to Defendant's First Set of Interrogatories not only fails to correspond with the correct Interrogatory, but it is onerous and unnecessary to have to flip back and forth between the two documents in order to determine what information Plaintiffs are adding, changing, or deleting.

Please confirm immediately whether Plaintiffs intend to serve a supplemental disclosure statement and supplemental responses to Defendant's Requests for Production. If we do not receive Plaintiffs' supplemental disclosure and discovery responses by **May 6, 2022**, we intend to move to compel all deficient and unresponsive responses and all withheld documents as previously stated.

Dana

From: Anderson, Barrett <banderson@cooley.com>

Sent: Thursday, April 28, 2022 8:00 PM

To: Dana Keene <dkeene@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; Dan Struck <DStruck@strucklove.com>; Andrea Bartles <abartles@strucklove.com>; Aubrey Joy Corcoran <aubreyjoy.corcoran@azag.gov>; patricia.lamagna@azag.gov; Christie Marsh <CMarsh@strucklove.com>

Cc: Asaf Orr <AOrr@nclrights.org>; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>

Subject: Roe v. Herrington - Correspondence

Counsel:

Correspondence attached.

Sincerely,
Barrett

Barrett J. Anderson

Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
+1 858 550 6161 office
+1 858 550 6420 fax
banderson@cooley.com
Pronouns: he, him, his

www.cooley.com/people/barrett-anderson

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ATTACHMENT 13

From: [Colin Proksel](#)
To: [LaMagna, Patricia](#); [Corcoran, Aubrey Joy](#); [EducationHealth@azag.gov](#); [Dan Struck](#); [Nick Acedo](#); [Dana Keene](#)
Cc: [Asaf Orr](#); [Anderson, Barrett](#); [Martin, Christopher L.](#); [Payslie Bowman](#); [Rebecca Warinner](#)
Subject: Roe v. Herrington - Supplemental Discovery Responses
Date: Friday, May 13, 2022 6:54:42 PM
Attachments: [2022-05-13 Roe v. Herrington - Supplemental Responses and Objections to First Set.pdf](#)
[2022-05-13 Roe v. Herrington - Supplemental Responses and Objections to Second Set.pdf](#)

Counsel,

Please see the attached.

Best,

Colin

Colin M. Proksel

[Profile](#) | [Add me to your address book](#) 

[2929 North Central Avenue](#)

[21st Floor](#)

[Phoenix, Arizona 85012](#)

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ATTACHMENT 14

to Declaration of Dana M. Keene - Sealed

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Helen Roe, a minor, by and through her parent and next friend Megan Roe; James Poe, a minor, by and through his parent and next friend Laura Poe; and Carl Voe, a minor, by and through his parent and next friend, Rachel Voe,

Plaintiffs,

v.

Don Herrington, in his official capacity as Interim State Registrar of Vital Records and Interim Director of the Arizona Department of Health Services,

Defendant.

NO. 4:20-cv-00484-JAS

**ORDER GRANTING
DEFENDANT’S MOTION TO
SEAL EXHIBIT 2 (DKT. 122-2) TO
DEFENDANT’S MOTION TO
COMPEL PLAINTIFFS’
SUPPLEMENTAL RESPONSE TO
DEFENDANT’S DISCOVERY
REQUESTS**

The Court, having reviewed Defendant’s Motion to Seal Exhibit 2 (Dkt. 122-2) to Defendant’s Motion to Compel Plaintiffs’ Supplemental Responses to Defendant’s Discovery Requests, and good cause appearing,

IT IS ORDERED that Defendant’s Motion is GRANTED.

IT IS FURTHER ORDERED that the Exhibit filed at Dkt. 122-2 shall remain sealed, and that the Clerk’s Office shall file the Attachment to Defendant’s Motion to Seal Exhibit 2 (Dkt. 122-2) on the public docket.