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11 *Attorneys for Plaintiffs and Proposed Class*
Additional counsel listed on following page
12

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

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

19 Plaintiffs,

20 v.

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

23 Defendant.
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Case No. 4:20-cv-00484-JAS

**PLAINTIFFS’ MOTION TO QUASH
SUBPOENA OR FOR A PROTECTIVE
ORDER**

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10 *Attorneys for Plaintiffs and Proposed Class*

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1 Defendant recently served Plaintiffs' experts, Dr. Daniel Shumer and Dr. Randi Ettner, with
2 subpoenas containing twenty-three expansive document requests and with return deadlines after
3 the close of expert discovery in this case. Plaintiffs respectfully request the Court quash these
4 subpoenas or enter a protective order because they are untimely.

5 BACKGROUND

6 Nearly six months ago, on February 9, 2023, Plaintiffs and Defendants stipulated to an
7 extension of all case deadlines by 60 days "to allow the Arizona Department of Health Services'
8 incoming director, Dr. Theresa Cullen, to assume office and to familiarize herself with this case,
9 and for the Parties to engage in good-faith settlement discussions." (Dkt. 179.) The Court granted
10 that stipulation and entered an order that, among other things, set Plaintiffs' expert disclosure
11 deadline as May 8, 2023, Defendant's expert disclosure deadline as June 5, 2023, Plaintiffs' rebuttal
12 disclosure deadline as June 26, 2023, and the final expert discovery deadline as July 28, 2023. (Doc.
13 180.) Since that stipulation, the parties attempted to negotiate a settlement, but were unsuccessful
14 and the case is thus proceeding.

15 On May 8, 2023, Plaintiffs served their expert disclosures, listing both Dr. Daniel Shumer
16 and Dr. Randi Ettner, and their expert reports. (Doc. 189.) Defendant did not disclose any experts
17 or serve any expert reports by the June 5, 2023 deadline. Defendant has also previously represented
18 to this Court that he "does not dispute the medical definition of gender identity/gender dysphoria,
19 or the accepted medical/psychological best practices to treat gender dysphoria in minors." (Dkt. 84
20 at 7.) Despite that there appears to be nothing to dispute with respect to Plaintiffs' expert reports,
21 Plaintiffs still obliged Defendants' request to make the experts available for depositions. On
22 July 10, 2023, after the parties negotiated a deposition schedule, Defendant noticed the depositions
23 for Dr. Shumer, which occurred on July 20, 2023, and Dr. Ettner, which Defendant agreed to set
24 for July 26, 2023. (Dkts. 203, 204.)

25 On July 17, 2023, about two and a half months after Plaintiffs disclosed their experts and
26 only three days before Dr. Shumer's deposition, Defendant sent subpoenas to Plaintiffs' experts
27 (attached hereto as Exhibits A and B). The subpoenas contain twenty-three expansive form
28 document requests, which are not tailored to the expert opinions in this case and which Plaintiffs

1 believe are otherwise overly burdensome and disproportionate to the needs of this case. The return
2 date on subpoenas, July 31, 2023, is three days after the expert discovery deadline of July 28, 2023.
3 Defendant has not filed a motion to extend that discovery deadline, nor has he explained good cause
4 for his delayed subpoena, which he could have served at any time since Plaintiffs' disclosed their
5 experts on May 8, 2023.

6 ARGUMENT

7 Courts in this Circuit have consistently held that document subpoenas under Federal Rule
8 of Civil Procedure 45 are tools of pretrial discovery that must comply with discovery deadlines.
9 *See, e.g., Brown v. Deputy No. 1*, No. 12-cv-1938, 2014 WL 842946, *7 (S.D. Cal. Mar. 4, 2014)
10 (“Document subpoenas under Rule 45 . . . [are] tools of pretrial discovery”); *nSight, Inc. v.*
11 *PeopleSoft, Inc.*, No. 3:04cv3836, 2006 WL 988807, *3-4 (N.D. Cal., Apr. 13, 2006) (finding Rule
12 45 pretrial subpoenas to be discovery that must be served within the designated discovery period);
13 *Integra Lifesciences I, Ltd. v. Merck KGaA*, 190 F.R.D. 556, 561 (S.D. Cal. 1999) (“Case law
14 establishes that subpoenas under Rule 45 are discovery, and must be utilized within the time period
15 permitted for discovery in a case.”).

16 Here, Defendant's subpoenas are untimely and should be quashed. The subpoena's
17 response dates are three days after the end of discovery in this case, a deadline that Defendant has
18 known since he agreed to it half a year ago. Defendant has not filed a motion to extend the July 28,
19 2023 expert discovery deadline, nor would he have good cause to request such an extension in any
20 event. Defendant could have served these subpoenas as soon as he received Plaintiffs' expert
21 reports on May 8, 2023—two-and-a-half months ago—but instead he waited until the eleventh
22 hour, only three days before the first expert deposition. Defendant has not explained any good
23 cause for these delayed subpoenas in the parties' meet-and-confer discussion and correspondence
24 on this motion. *See Fed. R. Civ. P. 16(b)(4)* (scheduling order may be modified only for good cause
25 and with the judge's consent). The subpoenas are thus plainly untimely.

26 Moreover, even if Defendant had served these subpoenas on a timely basis (and he did not),
27 any response provided by Plaintiffs would be virtually useless to him; both of Plaintiffs' experts
28 will have already been deposed by the time Plaintiffs would be obligated to respond. And Defendant

1 can hardly complain about the deposition dates. Like the deadline for the end of expert discovery,
2 Defendant affirmatively negotiated and agreed to those deposition dates. Defendant's untimeliness
3 is solely his fault. Accordingly, the Court should quash these subpoenas or enter a protective order
4 because they are untimely. *See United States v. Town of Colorado City*, No. 3:12-cv-08123-HRH,
5 Doc. No. 518 (D. Ariz. Oct. 27, 2014) (striking untimely subpoenas issued on the final day of
6 discovery); *Brown*, 2014 WL 842946, at *7 (quashing subpoenas where responses would have been
7 due on date falling after discovery deadline).

8 To the extent Defendant requests that this Court extend the expert discovery deadline, the
9 Court should not grant it for two reasons. First, Defendant does not have good cause to extend the
10 deadline. Defendant has not explained a single reason why he did not serve the subpoenas sooner.
11 Any extension to the expert discovery deadlines may further delay this case's dispositive motions
12 deadline. Plaintiffs should not be made to wait any further for the relief they seek simply because
13 of Defendant's lack of diligence. Second, as discussed above, the documents Defendant seeks are
14 burdensome to collect and produce, but more importantly are insignificant to the material issues at
15 this point in the litigation. That is especially true given that Defendant does not dispute Plaintiffs'
16 experts' central opinions, Defendant has not disclosed his own experts, and the depositions of
17 Plaintiffs' experts come before their obligations to respond to the subpoenas. The Court should not
18 reward Defendant's dilatory conduct and should refuse any belated request by Defendant for an
19 unwarranted and unnecessary extension.

20 CONCLUSION

21 For the foregoing reasons, the Court should grant Plaintiffs' Motion to Quash or for a
22 Protective Order. Plaintiffs reserve all objections to the requests in the subpoenas.

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CERTIFICATION UNDER LRCiv 7.2(j)

Plaintiffs' counsel hereby certifies that after consultation with counsel for Defendant the parties have been unable to resolve the matter at issue in this motion.

Respectfully submitted.

Dated: July 25, 2023

OSBORN MALEDON, P.A.

/s/Colin M. Proksel

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Colin Proksel (034133)
Payslie Bowman (035418)
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Christopher L. Martin (admitted *Pro Hac Vice*)

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Attorneys for Plaintiffs and Proposed Class

Exhibit A



STRUCK LOVE BOJANOWSKI & ACEDO, PLC

Dana M. Keene
480.420.1620
dkeene@strucklove.com

July 17, 2023

Daniel Shumer, MD, MPH
Pediatric Endocrinology Clinic / C.S. Mott Children's Hospital
1540 E. Hospital Drive
Floor 8, Reception B
Ann Arbor, MI 48109
dshumer@umich.edu

Re: *Roe, et al., v. Herrington, Case No. 4:20-cv-00484-JAS;*
In the United States District Court for the District of Arizona

Dear Dr. Shumer:

This firm represents Defendant Herrington in the above matter. Please find the enclosed Subpoena Duces Tecum seeking those items described in Attachment A relating to your expert files and expert testimony in this case. In lieu of producing documents at the time and place of production, you may provide responsive materials by U.S. mail scheduled for delivery on or before **July 31, 2023** to the address below, or via e-mail to my paralegal, Andrea Bartles, at ABartles@strucklove.com.

If you have any questions, please do not hesitate to contact me or Ms. Bartles. Your prompt attention is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Dana Keene". The signature is written in a cursive, flowing style.

Dana M. Keene
Partner

DMK/ab
Enclosures

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

UNITED STATES DISTRICT COURT

for the
District of Arizona

Helen Roe, et al.

Plaintiff

v.

Don Herrington.

Defendant

Civil Action No. 4:20-cv-00484-JAS

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

To: Daniel Shumer, MD, MPH, Pediatric Endocrinology Clinic / C.S. Mott Children's Hospital
1540 E. Hospital Drive, Floor 8, Reception B, Ann Arbor, MI 48109

(Name of person to whom this subpoena is directed)

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

Place: Struck Love Bojanowski & Acedo, PLC 3100 W. Ray Road, Suite 300 Chandler, AZ 85226	Date and Time: 07/31/2023 5:00 pm
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

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

Date: 07/17/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

*/s/ Dana M. Keene
Attorney's signature*

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

Dana Keene, Struck Love Bojanowski & Acedo, 3100 W. Ray Road, Ste 300, Chandler, AZ 85226 (480) 420-1600

Notice to the person who issues or requests this subpoena

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

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:20-cv-00484-JAS

PROOF OF SERVICE

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

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

on *(date)* _____.

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

Daniel Shumer, MD, MPH, Pediatric Endocrinology Clinic / C.S. Mott Children's Hospital 1540 E. Hospital Drive,
Floor 8, Reception B, Ann Arbor, MI 48109 on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

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

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

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

Date: 07/17/2023

/s/ Dana M. Keene

Server's signature

Dana M. Keene, Attorney

Printed name and title

Struck Love Bojanowski & Acedo, PLC
3100 W. Ray Road, Suite 300
Chandler, AZ 85226

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

EXHIBIT A

Definitions and Instructions

1. In lieu of providing documents at the time and place of production, you may provide responsive materials by U.S. mail scheduled for delivery on or before the date of production addressed as follows:

Daniel P. Struck, Esq.
Nicholas D. Acedo, Esq.
Dana M. Keene, Esq.
Struck Love Bojanowski & Acedo, PLC
3100 West Ray Road, Ste. 300
Chandler, AZ 85226
(480) 420-1600

You may also email responsive materials to ABartles@strucklove.com.

2. Provide a copy of this attachment with your response. If you do not have any responsive documents or things in your possession, control, or custody, which are responsive to a particular request, please indicate “No Documents” in the margin next to each such request.

3. The term “Document(s)” as used herein is defined to include any written record of information (e.g., letter, typewritten memoranda or contract, handwritten notes of meeting or telephone calls, diaries, checks, deposit slips, computer printouts, transcripts, drawings, design plans, etc.) or non-written record of information (e.g. video tapes, DVD, Blu-ray disks, cassette tapes, DAT tapes, CD photographs, graphs, maps, films, diagrams, models, etc.), specifically including but not limited to electronically stored information (e.g. computer files, diskettes, e-mail and instant messages, etc., and as broadly defined by EVID. R. 1001), of every type and description, however produced or reproduced in any form, whether draft, final, master, original, duplicate, copy, signed or unsigned, that is in the witness’ possession, custody or control (including but not limited to items to which the witness has or may obtain access), regardless of

where located. Any document bearing notations, markings, highlighting, or writings of any kind different from the original shall be treated as an original Document.

4. The words “Person” or “Persons” means all individuals or entities of every type and description including all natural persons, associations, companies, partnerships, joint ventures, corporations, trusts, estates, and federal, state, and municipal or local governmental agencies and entities in their subdivisions, bureaus, departments, and boards.

5. “Pertaining to” means consisting of, relating to, or referring to, reflecting, or having any logical or factual connection with, the subject matter dealt with or alluded to in the Request.

6. References to “You” or “Your” as used in these Requests shall be deemed to include the party to whom these Requests are directed as denominated in the pleadings (or a person acting on behalf of, or under the supervision of the party), the party’s agents, representatives, and/or employees, or, if a corporation or other entity, all of its current and former agents, employees, and others who have acted, or may now be acting, for or on its behalf, or any subsidiary or affiliated entities.

7. The words “and” and “or” shall be construed conjunctively or dis-conjunctively as is necessary to make each Request inclusive, rather than exclusive.

8. Copies of documents produced in response to this Subpoena Duces Tecum shall accurately reflect any highlighting or flagging (be it through sticky-note, tape flag, paper-clip or any other means) from the original documents.

Documents to be Produced

The witness shall produce the following Documents in any way pertaining to the above-captioned litigation:

1. Your most current curriculum vitae, and/or documents pertaining thereto, including without limitation your current curriculum vitae and list of all cases and matters in which you previously have given deposition and/or trial testimony either as an expert or fact witness.

2. All correspondence or communications between you and counsel for the Plaintiffs in this matter which relate to compensation you will receive related to this matter.

3. All time sheets and billing statements which you have prepared in connection with or pertaining to your engagement in this case.

4. All correspondence or communications between you and counsel for the Plaintiffs in this matter which identify any facts or data Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

5. All Documents which you (or those acting on your behalf or under your supervision) have prepared or generated in connection with your work relating to this case, including without limitation all annotations, summaries, drawings, test results, and notes relating to any facts, data, or documents Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

6. All Documents which you received and/or reviewed in this case.

7. All tangible physical items which you received, prepared, reviewed, interpreted, or relied upon in connection with or pertaining to your engagement or in forming any opinions about which you expect to testify in this case.

8. All statements, affidavits, depositions, deposition summaries, or other descriptions of any witness testimony or recollections which you have received, reviewed, and/or

interpreted in connection with or pertaining to your engagement or with the formulation of any opinions to which you expect to testify in this case.

9. All photographs, drawings, diagrams, models, audio recordings, or video recordings which you have reviewed in forming your opinions or in preparing for your trial testimony in this case.

10. All Documents which reflect the bases for the opinions which you have formed or which you expect to render in connection with your work relating to this case.

11. All correspondence or communications between you and counsel for the Plaintiffs in this matter which identify any assumptions which Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

12. All Documents and/or things which you (or those acting on your behalf or under your supervision) have prepared or generated in connection with your work relating to this case, including without limitation all annotations, summaries, models, diagrams, drawings, test results, and notes relating to any assumptions Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

13. All transcripts of testimony you have given in any prior cases relating in any manner to the topics and opinions about which you expect to testify and/or give opinions in this case.

14. All reports, affidavits, or declarations you have prepared in any prior case relating in any manner to the topics and opinions about which you expect to testify and/or give opinions in this case.

15. All publications, papers or documents relating to any listing in your resume or *curricula vitae* which specifically pertain to or relate to the topics and opinions about which you

expect to testify in this case, including, but not necessarily limited to all lesson plans, outlines, notes, handouts, presentation, etc.

16. All documentation of any and all training classes you have attended, taught, assisted, facilitated or been involved in any way with at any time relating to the topics and opinions about which you expect to testify and/or give opinions in this case.

17. All publications, texts, reports, books, treatises, papers, and/or other authorities of any nature upon which you specifically relied in forming any of the opinions in this case.

18. All standards, regulations, or other documents which reflect standards of care which you contend are applicable to the conduct at issue in this case.

19. All other discoverable Documents and/or things contained in your entire files concerning the above-captioned litigation, not previously mentioned.

20. Copies of any articles referenced in your report.

21. All of your reports, disclosures, and testimony (whether in court or deposition) from the cases listed on page 5 of your report.

22. All of your reports, disclosures, and testimony from any case in which you have been retained or served (in any capacity) as an expert witness.

23. All testimony you have provided (whether in court or deposition).

Exhibit B



STRUCK LOVE BOJANOWSKI & ACEDO, PLC

Dana M. Keene
480.420.1620
dkeene@strucklove.com

July 17, 2023

Randi Ettner, PhD
1214 Lake Street
Evanston, IL 60201

Re: *Roe, et al., v. Herrington, Case No. 4:20-cv-00484-JAS;*
In the United States District Court for the District of Arizona

Dear Dr. Ettner:

This firm represents Defendant Herrington in the above matter. Please find the enclosed Subpoena Duces Tecum seeking those items described in Attachment A relating to your expert files and expert testimony in this case. In lieu of producing documents at the time and place of production, you may provide responsive materials by U.S. mail scheduled for delivery on or before **July 31, 2023** to the address below, or via e-mail to my paralegal, Andrea Bartles, at ABartles@strucklove.com.

If you have any questions, please do not hesitate to contact me or Ms. Bartles. Your prompt attention is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Dana Keene". The signature is written in a cursive, flowing style.

Dana M. Keene
Partner

DMK/ab
Enclosures

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

UNITED STATES DISTRICT COURT

for the

District of Arizona

Helen Roe, et al.

Plaintiff

v.

Don Herrington.

Defendant

Civil Action No. 4:20-cv-00484-JAS

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

To: Randi Ettner, PhD, 1214 Lake Street
Evanston, IL 60201

(Name of person to whom this subpoena is directed)

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

Place: Struck Love Bojanowski & Acedo, PLC 3100 W. Ray Road, Suite 300 Chandler, AZ 85226	Date and Time: 07/31/2023 5:00 pm
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

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

Date: 07/17/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

*/s/ Dana M. Keene
Attorney's signature*

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

Dana Keene, Struck Love Bojanowski & Acedo, 3100 W. Ray Road, Ste 300, Chandler, AZ 85226 (480) 420-1600

Notice to the person who issues or requests this subpoena

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

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:20-cv-00484-JAS

PROOF OF SERVICE

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

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

on *(date)* _____ .

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

Randi Ettner, PhD, 1214 Lake Street Evanston, IL 60201

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

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

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

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

Date: 07/17/2023

/s/ Dana M. Keene

Server's signature

Dana M. Keene, Attorney

Printed name and title

Struck Love Bojanowski & Acedo, PLC
3100 W. Ray Road, Suite 300
Chandler, AZ 85226

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

EXHIBIT A

Definitions and Instructions

1. In lieu of providing documents at the time and place of production, you may provide responsive materials by U.S. mail scheduled for delivery on or before the date of production addressed as follows:

Daniel P. Struck, Esq.
Nicholas D. Acedo, Esq.
Dana M. Keene, Esq.
Struck Love Bojanowski & Acedo, PLC
3100 West Ray Road, Ste. 300
Chandler, AZ 85226
(480) 420-1600

You may also email responsive materials to ABartles@strucklove.com.

2. Provide a copy of this attachment with your response. If you do not have any responsive documents or things in your possession, control, or custody, which are responsive to a particular request, please indicate “No Documents” in the margin next to each such request.

3. The term “Document(s)” as used herein is defined to include any written record of information (e.g., letter, typewritten memoranda or contract, handwritten notes of meeting or telephone calls, diaries, checks, deposit slips, computer printouts, transcripts, drawings, design plans, etc.) or non-written record of information (e.g. video tapes, DVD, Blu-ray disks, cassette tapes, DAT tapes, CD photographs, graphs, maps, films, diagrams, models, etc.), specifically including but not limited to electronically stored information (e.g. computer files, diskettes, e-mail and instant messages, etc., and as broadly defined by EVID. R. 1001), of every type and description, however produced or reproduced in any form, whether draft, final, master, original, duplicate, copy, signed or unsigned, that is in the witness’ possession, custody or control (including but not limited to items to which the witness has or may obtain access), regardless of

where located. Any document bearing notations, markings, highlighting, or writings of any kind different from the original shall be treated as an original Document.

4. The words “Person” or “Persons” means all individuals or entities of every type and description including all natural persons, associations, companies, partnerships, joint ventures, corporations, trusts, estates, and federal, state, and municipal or local governmental agencies and entities in their subdivisions, bureaus, departments, and boards.

5. “Pertaining to” means consisting of, relating to, or referring to, reflecting, or having any logical or factual connection with, the subject matter dealt with or alluded to in the Request.

6. References to “You” or “Your” as used in these Requests shall be deemed to include the party to whom these Requests are directed as denominated in the pleadings (or a person acting on behalf of, or under the supervision of the party), the party’s agents, representatives, and/or employees, or, if a corporation or other entity, all of its current and former agents, employees, and others who have acted, or may now be acting, for or on its behalf, or any subsidiary or affiliated entities.

7. The words “and” and “or” shall be construed conjunctively or dis-conjunctively as is necessary to make each Request inclusive, rather than exclusive.

8. Copies of documents produced in response to this Subpoena Duces Tecum shall accurately reflect any highlighting or flagging (be it through sticky-note, tape flag, paper-clip or any other means) from the original documents.

Documents to be Produced

The witness shall produce the following Documents in any way pertaining to the above-captioned litigation:

1. Your most current curriculum vitae, and/or documents pertaining thereto, including without limitation your current curriculum vitae and list of all cases and matters in which you previously have given deposition and/or trial testimony either as an expert or fact witness.

2. All correspondence or communications between you and counsel for the Plaintiffs in this matter which relate to compensation you will receive related to this matter.

3. All time sheets and billing statements which you have prepared in connection with or pertaining to your engagement in this case.

4. All correspondence or communications between you and counsel for the Plaintiffs in this matter which identify any facts or data Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

5. All Documents which you (or those acting on your behalf or under your supervision) have prepared or generated in connection with your work relating to this case, including without limitation all annotations, summaries, drawings, test results, and notes relating to any facts, data, or documents Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

6. All Documents which you received and/or reviewed in this case.

7. All tangible physical items which you received, prepared, reviewed, interpreted, or relied upon in connection with or pertaining to your engagement or in forming any opinions about which you expect to testify in this case.

8. All statements, affidavits, depositions, deposition summaries, or other descriptions of any witness testimony or recollections which you have received, reviewed, and/or

interpreted in connection with or pertaining to your engagement or with the formulation of any opinions to which you expect to testify in this case.

9. All photographs, drawings, diagrams, models, audio recordings, or video recordings which you have reviewed in forming your opinions or in preparing for your trial testimony in this case.

10. All Documents which reflect the bases for the opinions which you have formed or which you expect to render in connection with your work relating to this case.

11. All correspondence or communications between you and counsel for the Plaintiffs in this matter which identify any assumptions which Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

12. All Documents and/or things which you (or those acting on your behalf or under your supervision) have prepared or generated in connection with your work relating to this case, including without limitation all annotations, summaries, models, diagrams, drawings, test results, and notes relating to any assumptions Plaintiffs' counsel either provided or declined to provide for your consideration in forming your expert opinions.

13. All transcripts of testimony you have given in any prior cases relating in any manner to the topics and opinions about which you expect to testify and/or give opinions in this case.

14. All reports, affidavits, or declarations you have prepared in any prior case relating in any manner to the topics and opinions about which you expect to testify and/or give opinions in this case.

15. All publications, papers or documents relating to any listing in your resume or *curricula vitae* which specifically pertain to or relate to the topics and opinions about which you

expect to testify in this case, including, but not necessarily limited to all lesson plans, outlines, notes, handouts, presentation, etc.

16. All documentation of any and all training classes you have attended, taught, assisted, facilitated or been involved in any way with at any time relating to the topics and opinions about which you expect to testify and/or give opinions in this case.

17. All publications, texts, reports, books, treatises, papers, and/or other authorities of any nature upon which you specifically relied in forming any of the opinions in this case.

18. All standards, regulations, or other documents which reflect standards of care which you contend are applicable to the conduct at issue in this case.

19. All other discoverable Documents and/or things contained in your entire files concerning the above-captioned litigation, not previously mentioned.

20. Copies of any articles referenced in your report.

21. All of your reports, disclosures, and testimony (whether in court or deposition) from the cases listed on page 4 of your report.

22. All of your reports, disclosures, and testimony from any case in which you have been retained or served (in any capacity) as an expert witness.

23. All testimony you have provided (whether in court or deposition).

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**UNITED STATES DISTRICT COURT
FOR THE 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.

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

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

The Court, having reviewed Plaintiffs' Motion to Quash, and good cause appearing, **IT IS HEREBY ORDERED** that Plaintiffs' Motion is GRANTED. Defendant's subpoenas to Plaintiffs' experts, Dr. Daniel Shumer and Dr. Randi Ettner, are quashed and of no effect.

Judge James A. Soto

United States District Court Judge