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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,

Plaintiffs,

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,

Defendant.

NO. 4:20-cv-00484-JAS

**DEFENDANT’S RESPONSE TO  
 PLAINTIFFS’ MOTION TO  
 QUASH SUBPOENA OR FOR A  
 PROTECTIVE ORDER (DKT. 206)**

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1 Defendant submits this Response to Plaintiffs' Motion to Quash Subpoena or For  
2 Protective Order (Dkt. 206.) For the following reasons, Plaintiffs lack standing to move to  
3 quash subpoenas directed at their non-party experts or to seek a protective order under Fed.  
4 R. Civ. P. 26(c)(1). Even if they had standing, Plaintiffs fail to meet their burden to establish  
5 that Defendant's subpoenas should be quashed under Fed. R. Civ. P. 45(d)(3)(A) and/or  
6 that they are entitled to a protective order under Fed. R. Civ. P. 26(c)(1). Plaintiffs' Motion  
7 to Quash Subpoena or For a Protective Order should be denied, and Plaintiffs' experts  
8 should be ordered to respond to the subpoenas.

9 **I. Relevant Background.**

10 The expert discovery deadline was on July 28, 2023.<sup>1</sup> (*See* Dkt. 180.) On July 17,  
11 2023, twelve days before the expert discovery deadline, Defendant served Subpoenas Duces  
12 Tecum on Plaintiffs' experts, Dr. Daniel Shumer and Dr. Randi Ettner. Pursuant to Fed. R.  
13 Civ. P. 45(a)(4), undersigned counsel provided Plaintiffs' counsel with copies of these  
14 subpoenas prior to service. The subpoenas set forth a compliance deadline of July 31, 2023.  
15 (*See* Dkt. 206-1 at 2–3; Dkt. 206-2 at 2–3.) Prior to service of these subpoenas, Defendant  
16 had previously noticed Dr. Shumer's deposition for July 20, 2023 (Dkt. 204), and Dr.  
17 Ettner's deposition for July 26, 2023 (Dkt. 203). (*See also* Exhibit 1, correspondence  
18 exchanged between counsel, at 3–6.)

19 At Dr. Shumer's deposition on July 20, Plaintiffs' counsel Rachel Berg informed  
20 defense counsel Dan Struck that Plaintiffs' experts would not be responding to either  
21 subpoena and that Plaintiffs would be filing a motion to quash. (Ex. 1 at 2.) Ms. Berg  
22 stated that it was Plaintiffs' position that discovery had closed, and that Plaintiffs' experts  
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24 <sup>1</sup> Defendant moved for an extension of all remaining deadlines, including the expert  
25 discovery deadline, on July 27, 2023, pending the Court's ruling on Plaintiffs' Motion to  
26 Quash and Motion for Class Certification. (Dkt. 207.) That Motion has been fully briefed  
27 and is awaiting disposition. (Dkt. 208, 209.) Plaintiffs' Motion to Quash, which was filed  
28 before Defendant's Motion to Extend, preemptively argues that the Court should deny  
Defendant's request for an extension of deadlines. (*See* Dkt. 206.) Because the parties'  
briefing on the Motion to Extend is pending, all argument regarding Plaintiffs' opposition  
to an extension of the remaining deadlines in their Motion to Quash is improper and should  
be disregarded.

1 were not required to respond to the subpoenas. (*Id.*) By correspondence dated July 24, Mr.  
2 Struck requested documents responsive to the subpoenas, and reserved Defendant’s right to  
3 re-depose Dr. Shumer based upon Plaintiffs’ refusal to produce responsive documents. (*Id.*)  
4 Ms. Berg responded on July 25, stating again that Plaintiffs would be filing a motion to  
5 quash, as the subpoenas served were untimely because they provided a July 31 compliance  
6 deadline. (Ex. 1 at 1–2.) At no time during these communications did Plaintiffs indicate  
7 that the compliance timeframe was otherwise unreasonable, that the documents requested  
8 were irrelevant, or that their experts could not comply with the subpoena due to undue  
9 burden and/or overbreadth. (*Id.*) Plaintiffs filed their Motion to Quash. (Dkt. 206.)

10 Later that day, defense counsel sent correspondence to Plaintiffs’ counsel, indicating  
11 that Defendant provided a two-week response deadline as a courtesy since the rule does not  
12 set out a specific timeframe, and that the July 31 response deadline inadvertently fell outside  
13 the expert discovery window by one business day, which could have been remedied by an  
14 informal discussion between counsel rather than motions practice. (Ex. 1 at 1.) Defendant  
15 agreed to proceed with Dr. Ettner’s deposition the following day, but reiterated his position  
16 that the subpoenas were timely, and reserved the right to re-depose Plaintiffs’ experts  
17 pending the outcome of the motion to quash and/or the documents produced in response to  
18 the subpoenas. (*Id.*) Aside from informal communications between the parties, Plaintiffs  
19 never requested a meet and confer to discuss, or attempt to resolve, these issues.

20 On July 31, Plaintiffs served Non-Party Dr. Randi Ettner’s Responses and Objections  
21 to Defendant Don Herrington’s Subpoena and Non-Party Dr. Daniel Shumer’s Responses  
22 and Objections to Defendant Don Herrington’s Subpoena. (*See* Dkt. 209; *see also* Exhibit  
23 2, Non-Party Dr. Randi Ettner’s Responses and Objections to Defendant Don Herrington’s  
24 Subpoena; Exhibit 3, Non-Party Dr. Daniel Shumer’s Responses and Objections to  
25 Defendant Don Herrington’s Subpoena.) Both documents are 26 pages long and contain  
26 voluminous general boilerplate and specific objections presumably prepared by Plaintiffs’  
27 counsel. (*See* Ex. 2–3.) Drs. Shumer and Ettner did not substantively respond to any request  
28 but indicated that they are “willing to meet and confer” regarding the requests in the event

1 the Court denies Plaintiffs' Motion to Quash. (*Id.*)

2 **II. Plaintiffs Lack Standing to Move to Quash Subpoenas Directed at Non-Parties.**

3 Generally, only the third-party served with a subpoena has standing to move to quash  
4 it. *Salazar v. Driver Provider Phoenix LLC*, No. CV-19-05760, PHX-SMB, 2022 WL  
5 9408596, at \*2 (D. Ariz. Oct. 14, 2022). In some circumstances, “[a] party has standing to  
6 challenge a subpoena served on [a third-party] only if the party can show it has a personal  
7 right or privilege regarding the subject matter of the subpoena.” *Blotzer v. L-3 Commc’ns*  
8 *Corp.*, 287 F.R.D. 507, 509 (D. Ariz. 2012). A party can show a personal right or privilege  
9 through “information which could expose the moving party to annoyance, embarrassment,  
10 oppression, or undue burden or expense.” *Salazar*, 2022 WL 9408596, at \*2. But an  
11 objecting party must show that their *own* information is at risk, not merely the third-party’s.  
12 *Id.* Moreover, “a party’s objection that the third-party subpoena ‘seeks irrelevant  
13 information or imposes an undue burden on the nonparty are not grounds in which a party  
14 has standing to move to quash a subpoena issued to a non-party.’” *Id.* (quoting *G.K. Las*  
15 *Vegas Ltd. P’ship v. Simon Prop. Grp., Inc.*, No. 2:04-CV-01199-DAE-GWF, 2007 WL  
16 119148, at \*3 (D. Nev. Jan. 9, 2007)).

17 Here, only Plaintiffs’ experts, not Plaintiffs, have standing to move to quash the  
18 subpoenas. Plaintiffs have not claimed any privilege in the information sought, or that they  
19 have a personal right to it. They have not alleged that their own private information is  
20 somehow at risk of being produced, or that they would face annoyance, embarrassment,  
21 oppression, or undue burden or expense. Nor could they, as both subpoenas request  
22 documents and information related to Plaintiffs’ experts’ qualifications, experiences,  
23 opinions, and communications with Plaintiffs’ counsel, and any documents produced that  
24 tangentially involve Plaintiffs were likely already disclosed and/or produced by Plaintiffs  
25 in this lawsuit. (*See* Dkt. 206-1 at 6–10; Dkt. 206-2 at 6–10.) And Plaintiffs’ general  
26 assertions that the subpoenas are unduly burdensome, disproportionate, and/or irrelevant,  
27 are not arguments Plaintiffs have standing to make. *See Salazar*, 2022 WL 9408596, at \*2  
28 (finding defendants lacked standing to raise objections to subpoena directed at third-party

1 because there was no evidence that subpoena was issued to cause defendants’  
2 embarrassment, annoyance, and/or oppression, and defendants could not object to  
3 subpoena’s relevancy or undue burden). Thus, Plaintiffs lack standing to move to quash  
4 the subpoenas served on Plaintiffs’ non-party experts, and their Motion to Quash should be  
5 denied on this basis alone. *Id.*

### 6 **III. Plaintiffs’ Motion to Quash Should Be Denied.**

7 Even if Plaintiffs have standing to move to quash the subpoenas, they fail to  
8 demonstrate that the subpoenas are untimely or that they would subject a person to undue  
9 burden under Fed. R. Civ. P. 45(d)(3)(A). Rule 45(d)(3)(A) requires a court to quash or  
10 modify a subpoena that, “(i) fails to allow a reasonable time to comply; (ii) requires a person  
11 to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure  
12 of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a  
13 person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A). The party moving to quash a  
14 subpoena bears the burden of persuasion, while the party issuing the subpoena must  
15 demonstrate that the discovery sought is relevant. *Airbus DS Optronics GmbH v. Nivvisys*  
16 *LLC*, No. CV-14-02399-PHX-JAT, 2015 WL 3439143, at \*11 (D. Ariz. May 28, 2015).

#### 17 **A. Defendant’s Subpoenas Were Timely.**

18 It is undisputed that Defendant served expert subpoenas on July 17, 2023, twelve  
19 days *prior* to the expert discovery deadline on July 28, 2023. It defies logic that subpoenas  
20 served prior to the expert discovery cutoff could be deemed “plainly untimely” as Plaintiffs  
21 suggest. (Dkt. 206 at 2.) Indeed, Rule 45 does not specify how much time must be allowed  
22 between service of a subpoena and the subpoena’s compliance date, but states only that the  
23 subpoena must allow for a “reasonable time” to comply based on the underlying  
24 circumstances of the case and the documents requested. *Roadrunner Intermodal Servs.,*  
25 *LLC v. T.G.S. Transportation, Inc.*, No. 117CV01056DADBAM, 2017 WL 4844381, at \*2-  
26 3 (E.D. Cal. Oct. 26, 2017); *see also* Fed. R. Civ. P. 45. “Service of subpoenas at least 10  
27 days before the deposition or production is customary, but not mandatory.” *Bonzani v.*  
28 *Shinseki*, No. 2:11-CV-00007-EFB, 2014 WL 2521849, at \*4 (E.D. Cal. June 4, 2014).

1  
2 The crux of Plaintiffs' Motion to Quash is that the subpoenas are untimely; not  
3 because they failed to allow a reasonable time to comply, but because they provided a  
4 compliance deadline of July 31, 2023. (See Dkt. 206 at 4.) But Plaintiffs' experts'  
5 obligations to respond to subpoenas are not nullified simply because an arbitrary response  
6 deadline fell one business day outside the expert discovery window, and Plaintiffs have  
7 failed to provide applicable authority supporting this position.<sup>2</sup> Tellingly, even if a July 28  
8 compliance deadline was provided, Plaintiffs do not argue that the subpoenas failed to allow  
9 a reasonable time to comply pursuant to Rule 45(d)(3)(A)(i).

10 Rather than attempt to make a good faith effort to respond and to demonstrate how  
11 their experts could not reasonably comply with the timeframe, Plaintiffs' counsel simply  
12 instructed their experts not to respond at all.<sup>3</sup> (See Ex. 1 at 1–2.) Had Plaintiffs requested  
13 additional time to comply with the subpoena, Defendant would have been amenable to an  
14 extension. But instead of working towards a solution, Plaintiffs filed their Motion. See  
15 *Century Int'l Arms Inc. v. XTech Tactical LLC*, No. CV-18-03404-PHX-GMS, 2020 WL  
16 224361, at \*3 (D. Ariz. Jan. 15, 2020) (finding third party, who offered no evidence  
17 suggesting they even attempted to comply with the subpoena, failed to establish that original  
18 ten-day subpoena compliance deadline, even coupled with seven-day extension, was  
19 unreasonable).

20 Indeed, Defendant served the subpoenas *within* the expert discovery period, and

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21 <sup>2</sup> This is not a case where Defendant served subpoenas *on* the expert discovery  
22 deadline, which is what apparently occurred in *United States v. Town of Colorado City*, No.  
23 3:12-cv-08123-HRH, Doc. No. 518 (D. Ariz. Oct. 27, 2014), or two days prior to the  
24 discovery deadline with a compliance deadline outside of the discovery window, which is  
25 what occurred in *Brown v. Deputy No. 1*, Civil No. 12-CV-1938-GPC (BGS), 2014 WL  
842946 (S.D. Cal. Mar. 4, 2014). Plaintiffs' reliance on these cases are inapposite. (Dkt.  
206 at 3.)

26 <sup>3</sup> On July 31, instead of substantively responding to the subpoenas, Plaintiffs served  
27 extensive objections to the subpoenas, both of which were 26 pages long. (See Dkt. 209;  
28 see also Ex. 2–3.) Drs. Shumer and Ettner could have substantively responded to the  
subpoenas in the time it took them to draft their extensive objections.

1 allowed fourteen days to comply. The subpoenas were timely, and Defendant provided  
2 Plaintiffs' experts with a reasonable time to comply.<sup>4</sup> See *Roadrunner*, 2017 WL 4844381,  
3 at \*3 (finding 14-day subpoena compliance date was reasonable); *Bonzani*, 2014 WL  
4 2521849, at \*4 (E.D. Cal. June 4, 2014) (finding 14-day subpoena response time was  
5 reasonable but recognizing that "Rule 45 specifically contemplates circumstances where  
6 the response time might be less."). Plaintiffs' Motion to Quash based on untimeliness  
7 should be denied.

8 **B. Plaintiffs Have Failed to Demonstrate Undue Burden, Overbreadth, or**  
9 **Irrelevance.**

10 As stated above, Plaintiffs cannot assert a relevance, overbreadth, and/or undue  
11 burden objection on behalf of their experts. *Salazar*, 2022 WL 9408596, at \*2. Even if  
12 they could, a party moving to quash bears the burden of establishing a subpoena is unduly  
13 burdensome. *F.D.I.C. v. Garner*, 126 F.3d 1138, 1146 (9th Cir. 1997). That burden is a  
14 heavy one. See *In re Yassai*, 225 B.R. 478, 483-84 (Bankr. C.D. Cal. 1998) (movants failed  
15 to meet their burden in demonstrating an undue burden by failing to present evidence  
16 pertaining to the time, cost, or inconvenience entailed in responding to subpoenas).

17 Here, Plaintiffs claim that the subpoenas contain "expansive form document  
18 requests" that are unduly burdensome and disproportionate. (Dkt. 206 at 2-3.) Aside from  
19 this general assertion, however, Plaintiffs' Motion is devoid of explanation demonstrating  
20 the purported burden Drs. Shumer or Ettner would face by responding to these subpoenas.  
21 The Motion does not contain a single mention of cost, time, and/or inconvenience. Nor  
22 could it, as the items requested relate to Plaintiffs' experts' qualifications, experiences,  
23 opinions, and communications with Plaintiffs' counsel under Fed. R. Civ. P. 26(b)(4)(C),  
24 which are relevant and discoverable, and are typically requested during expert discovery in

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25 <sup>4</sup> Plaintiffs claim that Defendant failed to provide "good cause" for the allegedly  
26 delayed subpoenas during the parties' discussions and cite Fed. R. Civ. P. 16(b)(4) in  
27 support of this proposition. (Dkt. 206 at 2.) The "good cause" standard contained in Rule  
28 16(b)(4) applies to scheduling orders, not parties' discussions regarding the timeliness of  
subpoenas served to non-parties under Rule 45.

1 civil lawsuits. (*See* Dkt. 206-1 at 6–10; Dkt. 206-2 at 6–10.) The documents requested  
2 would not, as Plaintiffs contend, be “useless” to Defendant. Rather, these documents will  
3 likely be used as evidence (including impeachment evidence) at the summary judgment  
4 stage and at trial. Moreover, the documents requested, to the extent they exist, should be in  
5 the possession of Plaintiffs’ experts and readily available to them. Indeed, Plaintiffs’ expert  
6 Dr. Randi Ettner, testified that she could easily bring up and review documentation on her  
7 computer during her deposition. Thus, Plaintiffs’ Motion falls woefully short of  
8 establishing irrelevance, overbreadth, and/or undue burden. *See F.D.I.C. v. Garner*, 126  
9 F.3d at 1146 (“Although the FDIC’s requests are extensive, we cannot hold that the  
10 subpoenas are overbroad or unduly burdensome absent a showing by Appellants of  
11 additional support for this position.”). Plaintiffs’ Motion to Quash based on undue burden,  
12 overbreadth, and/or relevance should be denied.

13 **C. Plaintiffs Lack Standing to Move for a Protective Order and Their**  
14 **Request for a Protective Order is Procedurally Deficient.**

15 Pursuant to Fed. R. Civ. P. 26(c)(1), a party from whom discovery is sought may  
16 move for a protective order, and the court may, upon good cause shown, issue an order to  
17 protect a party or person from annoyance, embarrassment, oppression, or undue burden or  
18 expense. “For good cause to exist, the party seeking protection bears the burden of showing  
19 specific prejudice or harm will result if no protective order is granted.” *Phillips ex rel.*  
20 *Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002). And, a  
21 motion for protective order “must include a certification that the movant has in good faith  
22 conferred or attempted to confer with other affected parties in an effort to resolve the dispute  
23 without court action.” Fed. R. Civ. P. 26(c)(1).

24 At the outset, Plaintiffs’ Motion fails to include a certification showing that they  
25 conferred or attempted to confer with Defendant in good faith in an effort to resolve the  
26 dispute without court action. *Id.* Plaintiffs’ failure to do so is fatal to their request for a  
27 protective order under both Fed. R. Civ. P. 26(c)(1) and Local Rule 7.2(j). *See So v. Land*  
28 *Base, LLC*, No. CV 08-03336 DDP (AGRx); 2009 WL 2407954, at \*2 (C.D. Cal. Aug. 4,

1 2009) (denying defendant’s motion for protective order as procedurally deficient where he  
2 failed to include a good faith certification under Rule 26(c)(1)); *see also* LRCiv 7.2(j) (“No  
3 discovery motion will be considered or decided unless a statement of moving counsel is  
4 attached thereto certifying that after personal consultation and sincere efforts to do so,  
5 counsel have been unable to satisfactorily resolve the matter. Any discovery motion brought  
6 before the Court without prior personal consultation with the other party and a sincere effort  
7 to resolve the matter, may result in sanctions.”). Plaintiffs’ request for a protective order  
8 should be denied as procedurally deficient on this basis alone.

9         Nevertheless, a party can move for a protective order “in regard to a subpoena issued  
10 to a non-party if it believes its own interests are jeopardized by discovery sought from a  
11 third party and has standing under Rule 26(c) to seek a protective order regarding subpoenas  
12 issued to non-parties which seek irrelevant information.” *In re REMEC, Inc. Sec. Litig.*,  
13 No. CIV 04CV1948 JLS AJB, 2008 WL 2282647, at \*1 (S.D. Cal. May 30, 2008); *see also*  
14 *SiteLock LLC v. GoDaddy.com LLC*, No. CV-19-02746-PHX-DWL, 2023 WL 4661842, at  
15 \*7, n.12 (D. Ariz. July 20, 2023) (“The protective order mechanism is appropriate so long  
16 as the party is asserting its own interests—e.g., its interest in keeping the scope of discovery  
17 reasonable—rather than the interests of the subpoena target.”). A party, however, does not  
18 have standing to seek a protective order that equates to a quashing of subpoenas directed to  
19 others. *See KeyBank Nat’l Ass’n v. Neumann Dermatology LLC*, No. CV-21-00133-PHX-  
20 JJT, 2022 WL 11861411, at \*2 (D. Ariz. Jan. 3, 2022).

21         Plaintiffs do not have standing to seek a protective order because they are not the  
22 parties “from whom discovery is sought” within the plain meaning of Fed. R. Civ. P.  
23 26(c)(1). *See id.* (finding that defendants lacked standing to move for a protective order  
24 under Rule 26(c)(1) because they were not parties from whom the discovery was sought  
25 where subpoenas were directed at third parties). Nor do Plaintiffs have standing to seek a  
26 protective order that equates to a quashing of subpoenas directed at their experts. *Id.*

27         Even if they had standing, Plaintiffs’ Motion mentions “protective order” only once  
28 in the substantive portion of the motion. (*See* Dkt. 206 at 5.) Their Motion falls woefully

1 short of establishing that their interests are somehow jeopardized by the information sought  
2 in the subpoenas. *See KeyBank*, 2022 WL 11861411, at \*2 (“[T]he mere fact that  
3 information harmful to a party’s claim or defense might emerge from such a third party  
4 subpoena does not constitute ‘jeopardized interests[.]’”). And, as stated above, Plaintiffs  
5 cannot assert relevance, undue burden, and/or overbreadth objections on their experts’  
6 behalf. *Salazar*, 2022 WL 9408596, at \*2. Accordingly, Plaintiffs’ vague request for a  
7 protective order should be denied.

8 **IV. Conclusion.**

9 For the foregoing reasons, Plaintiffs’ Motion to Quash Subpoena or For a Protective  
10 Order should be denied, and Plaintiffs’ experts should be ordered to respond to the  
11 subpoenas in full.

12  
13 DATED this 8th day of August, 2023.

14 STRUCK LOVE BOJANOWSKI & ACEDO, PLC

15  
16 By           /s/ Dana M. Keene          

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2023, 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:

Barrett J. Anderson	<a href="mailto:banderson@cooley.com">banderson@cooley.com</a>
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Rachel Berg	<a href="mailto:rberg@nclrights.org">rberg@nclrights.org</a>

/s/ Allen Rowley \_\_\_\_\_

# **EXHIBIT 1**

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**From:** Dana Keene  
**Sent:** Tuesday, July 25, 2023 3:31 PM  
**To:** Rachel Berg; Dan Struck; Nick Acedo; LaMagna, Patricia; Corcoran, Aubrey Joy; Anne Orcutt  
**Cc:** Anderson, Barrett; Taylor, Jessica L.; Ainbinder, Stephanie; Colin Proksel; Payslie Bowman; Amy Bearden; Brenna Bull  
**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Rachel,

Defendant served expert subpoenas on July 17, almost two weeks before the expert discovery deadline. We provided a two-week response deadline as a courtesy since the rule does not set out a specific timeframe. The July 31<sup>st</sup> response deadline provided on the subpoenas inadvertently fell outside of the expert discovery window by one business day. This discrepancy could have easily been remedied by an informal conversation between counsel.

Regardless, even if a July 28<sup>th</sup> response deadline was provided on the subpoenas, Plaintiffs have failed to provide a reason why this timeframe is unreasonable. In addition, during Dr. Shumer's deposition on July 20<sup>th</sup>, Dan requested documents responsive to the subpoena served on Dr. Ettner prior to her deposition tomorrow to avoid having to re-depose her, but Plaintiffs refused, and stated that neither expert would be responding.

We believe the subpoenas are timely, and we intend to respond to Plaintiffs' motion to quash accordingly. We will proceed with Dr. Ettner's deposition tomorrow, but Defendant reserves the right to re-depose both of Plaintiffs' experts pending the outcome of the motion to quash and/or the documents produced in response to the subpoenas.

Defendant also intends to move for an extension of the remaining deadlines given the pending motion to quash and because the Court has yet to rule on Plaintiffs' Motion for Class Certification.

Dana

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**From:** Rachel Berg <RBerg@nclrights.org>  
**Sent:** Tuesday, July 25, 2023 12:25 PM  
**To:** Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; LaMagna, Patricia <Patricia.LaMagna@azag.gov>; Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Anne Orcutt <AOrcutt@strucklove.com>  
**Cc:** Anderson, Barrett <banderson@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Amy Bearden <ABearden@strucklove.com>; Brenna Bull <bbull@strucklove.com>  
**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Dan,

Plaintiffs will be filing a motion to quash the subpoenas. The subpoenas you served have a deadline of July 31, 2023. This is three days past the expert discovery deadline of July 28, 2023 in this case that you reference. Courts in the Ninth Circuit have consistently granted motions to quash such untimely subpoenas.

Plaintiffs also oppose any request to allow another deposition of any of our experts or in any way extend the discovery deadlines in this case. If you do not depose Dr. Ettner tomorrow, we will oppose any request to depose her at a later

date. Dr. Ettner has also let us know that she will be undergoing surgery on Friday (7/28) with an uncertain recovery time and that she will be unavailable for at least ten days after the surgery.

Moreover, even if the subpoenas were timely (they are not), Plaintiffs do not have an obligation to serve their responses before the deadline outlined in the subpoena and the Federal Rules of Civil Procedure. Accordingly, Defendant has no basis to postpone the deposition of Dr. Ettner or take another deposition of Dr. Shumer based on Plaintiffs' lack of response to the subpoenas before the previously scheduled depositions.

Plaintiffs further reserve all objections to the requests in the subpoenas.

Thanks,  
Rachel

**From:** Dan Struck <DStruck@strucklove.com>

**Sent:** Monday, July 24, 2023 7:07 PM

**To:** Rachel Berg <RBerg@ndrights.org>; Dana Keene <dkeene@strucklove.com>; Nick Acedo <NAcedo@strucklove.com>; LaMagna, Patricia <Patricia.LaMagna@azag.gov>; Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Anne Orcutt <AOrcutt@strucklove.com>

**Cc:** Anderson, Barrett <banderson@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Amy Bearden <ABearden@strucklove.com>; Brenna Bull <bbull@strucklove.com>

**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Rachel,

Last week, during Dr. Shumer's deposition, you announced that plaintiffs would be filing a Motion to Quash the Subpoena Duces Tecum relating the documents requested from Dr. Shumer and Dr. Ettner. You stated that it was plaintiffs' position that "discovery was closed" and that, therefore, these doctors did not have to respond to the subpoenas. You stated that you had intended to contact Tricia LaMagna to "meet and confer" and request that defendant withdraw the subpoenas. I informed you that there was no need to conduct an additional meet and confer, and that defendant would not be withdrawing the subpoenas because the expert discovery had not closed.

Attached is the order extending expert discovery to 7/28/23. Please produce the documents described in the SDT by tomorrow at noon, so that we have sufficient time to review them prior to the deposition on Wednesday. If you are still planning to ask the court to quash the subpoenas, please let me know so that we can decide whether we need to postpone the deposition Wednesday until the court can rule on your motion. Also, please know that we are reserving the right to re-depose Dr. Shumer based upon your refusal to produce these documents.

Dan Struck



Daniel P. Struck  
Attorney

**STRUCK LOVE BOJANOWSKI & ACEDO, PLC**

3100 W. Ray Road | Suite 300 | Chandler AZ 85226

p: 480.420.1601 | dstruck@strucklove.com | strucklove.com

**From:** Rachel Berg <[RBerg@nclrights.org](mailto:RBerg@nclrights.org)>

**Sent:** Thursday, July 6, 2023 6:56 AM

**To:** Dana Keene <[dkeene@strucklove.com](mailto:dkeene@strucklove.com)>; Nick Acedo <[NAcedo@strucklove.com](mailto:NAcedo@strucklove.com)>; LaMagna, Patricia <[Patricia.LaMagna@azag.gov](mailto:Patricia.LaMagna@azag.gov)>; Corcoran, Aubrey Joy <[AubreyJoy.Corcoran@azag.gov](mailto:AubreyJoy.Corcoran@azag.gov)>; Dan Struck <[DStruck@strucklove.com](mailto:DStruck@strucklove.com)>; Anne Orcutt <[AORcutt@strucklove.com](mailto:AORcutt@strucklove.com)>

**Cc:** Anderson, Barrett <[banderson@cooley.com](mailto:banderson@cooley.com)>; Taylor, Jessica L. <[jtaylor@cooley.com](mailto:jtaylor@cooley.com)>; Ainbinder, Stephanie <[sainbinder@cooley.com](mailto:sainbinder@cooley.com)>; Colin Proksel <[cproksel@omlaw.com](mailto:cproksel@omlaw.com)>; Payslie Bowman <[pbowman@omlaw.com](mailto:pbowman@omlaw.com)>; Amy Bearden <[ABearden@strucklove.com](mailto:ABearden@strucklove.com)>; Brenna Bull <[bbull@strucklove.com](mailto:bbull@strucklove.com)>

**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Dana,

These days/times are confirmed.

Thanks,

Rachel

**From:** Dana Keene <[dkeene@strucklove.com](mailto:dkeene@strucklove.com)>

**Sent:** Wednesday, July 5, 2023 1:17 PM

**To:** Rachel Berg <[RBerg@nclrights.org](mailto:RBerg@nclrights.org)>; Nick Acedo <[NAcedo@strucklove.com](mailto:NAcedo@strucklove.com)>; LaMagna, Patricia <[Patricia.LaMagna@azag.gov](mailto:Patricia.LaMagna@azag.gov)>; Corcoran, Aubrey Joy <[AubreyJoy.Corcoran@azag.gov](mailto:AubreyJoy.Corcoran@azag.gov)>; Dan Struck <[DStruck@strucklove.com](mailto:DStruck@strucklove.com)>; Anne Orcutt <[AORcutt@strucklove.com](mailto:AORcutt@strucklove.com)>

**Cc:** Anderson, Barrett <[banderson@cooley.com](mailto:banderson@cooley.com)>; Taylor, Jessica L. <[jtaylor@cooley.com](mailto:jtaylor@cooley.com)>; Ainbinder, Stephanie <[sainbinder@cooley.com](mailto:sainbinder@cooley.com)>; Colin Proksel <[cproksel@omlaw.com](mailto:cproksel@omlaw.com)>; Payslie Bowman <[pbowman@omlaw.com](mailto:pbowman@omlaw.com)>; Amy Bearden <[ABearden@strucklove.com](mailto:ABearden@strucklove.com)>; Brenna Bull <[bbull@strucklove.com](mailto:bbull@strucklove.com)>

**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Rachel,

We will notice Dr. Ettner's deposition for Wednesday, July 26 at 10 a.m. CT (8 a.m. PST).

We will notice Dr. Shumer's deposition for Thursday, July 20 at 11 a.m. EST (8 a.m. PST).

Please confirm that those times work. Both will be held remotely.

Thanks,

Dana

**From:** Rachel Berg <[RBerg@nclrights.org](mailto:RBerg@nclrights.org)>

**Sent:** Wednesday, July 5, 2023 9:00 AM

**To:** Nick Acedo <[NAcedo@strucklove.com](mailto:NAcedo@strucklove.com)>; LaMagna, Patricia <[Patricia.LaMagna@azag.gov](mailto:Patricia.LaMagna@azag.gov)>; Corcoran, Aubrey Joy <[AubreyJoy.Corcoran@azag.gov](mailto:AubreyJoy.Corcoran@azag.gov)>; Dan Struck <[DStruck@strucklove.com](mailto:DStruck@strucklove.com)>; Dana Keene <[dkeene@strucklove.com](mailto:dkeene@strucklove.com)>; Anne Orcutt <[AORcutt@strucklove.com](mailto:AORcutt@strucklove.com)>

**Cc:** Anderson, Barrett <[banderson@cooley.com](mailto:banderson@cooley.com)>; Taylor, Jessica L. <[jtaylor@cooley.com](mailto:jtaylor@cooley.com)>; Ainbinder, Stephanie <[sainbinder@cooley.com](mailto:sainbinder@cooley.com)>; Colin Proksel <[cproksel@omlaw.com](mailto:cproksel@omlaw.com)>; Payslie Bowman <[pbowman@omlaw.com](mailto:pbowman@omlaw.com)>

**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Nick,

Thank you for your e-mail. Dr. Ettner is available on Wednesday, July 26 for a virtual deposition starting at 9am CT.

Dr. Shumer is not available July 25-28. However, he is available for a virtual deposition on Thursday, July 20 starting at 10am ET.

Please confirm those dates and times.

Best,  
Rachel

---

**From:** Nick Acedo <NAcedo@strucklove.com>  
**Sent:** Monday, July 3, 2023 5:48 PM  
**To:** Rachel Berg <RBerg@nclrights.org>; LaMagna, Patricia <Patricia.LaMagna@azag.gov>; Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Anne Orcutt <AOrcutt@strucklove.com>  
**Cc:** Anderson, Barrett <banderson@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>  
**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Hi Rachel,

We would like to depose both experts. We are available July 25-28. Please let us know which dates work best for you and your experts. We can do them virtually if you would like.

Thanks,

Nick

---

**From:** Rachel Berg <RBerg@nclrights.org>  
**Sent:** Wednesday, June 28, 2023 8:32 AM  
**To:** Nick Acedo <NAcedo@strucklove.com>; LaMagna, Patricia <Patricia.LaMagna@azag.gov>; Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Anne Orcutt <AOrcutt@strucklove.com>  
**Cc:** Anderson, Barrett <banderson@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>  
**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Nick,

I am writing to follow up on the below. Please let us know. Expert discovery closes on July 28.

Thanks,  
Rachel

**Rachel H. Berg | Staff Attorney**

*(Pronouns: she/her)*

[rberg@nclrights.org](mailto:rberg@nclrights.org)

(415) 343-7679 office

*Licensed to practice law in Tennessee and New York*



**National Center for Lesbian Rights**  
*Feminist Founded, Advocates for All*

[nclrights.org](http://nclrights.org) | [Facebook](#) | [Twitter](#) | [Instagram](#)

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**From:** Nick Acedo <[NAcedo@strucklove.com](mailto:NAcedo@strucklove.com)>

**Sent:** Tuesday, June 20, 2023 5:31 PM

**To:** Rachel Berg <[RBerg@nclrights.org](mailto:RBerg@nclrights.org)>; LaMagna, Patricia <[Patricia.LaMagna@azag.gov](mailto:Patricia.LaMagna@azag.gov)>; Corcoran, Aubrey Joy <[AubreyJoy.Corcoran@azag.gov](mailto:AubreyJoy.Corcoran@azag.gov)>; Dan Struck <[DStruck@strucklove.com](mailto:DStruck@strucklove.com)>; Dana Keene <[dkeene@strucklove.com](mailto:dkeene@strucklove.com)>; Anne Orcutt <[AORcutt@strucklove.com](mailto:AORcutt@strucklove.com)>

**Cc:** Anderson, Barrett <[banderson@cooley.com](mailto:banderson@cooley.com)>; Martin, Christopher L. <[cmartin@cooley.com](mailto:cmartin@cooley.com)>; Taylor, Jessica L. <[jtaylor@cooley.com](mailto:jtaylor@cooley.com)>; Ainbinder, Stephanie <[sainbinder@cooley.com](mailto:sainbinder@cooley.com)>; Colin Proksel <[cproksel@omlaw.com](mailto:cproksel@omlaw.com)>; Payslie Bowman <[pbowman@omlaw.com](mailto:pbowman@omlaw.com)>

**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Hi Rachel,

We are still contemplating, but will likely be deposing at least one, if not both, of your experts. We will give you and your expert(s) adequate notice of any deposition. If it comes up at the hearing, we will address it at that time.

Thanks,

Nick



Nicholas D. Acedo  
Partner

**STRUCK LOVE BOJANOWSKI & ACEDO, PLC**

3100 West Ray Road | Suite 300 | Chandler AZ 85226

480.420.1609 | [nacedo@strucklove.com](mailto:nacedo@strucklove.com) | [STRUCKLOVE.COM](http://STRUCKLOVE.COM)

**From:** Rachel Berg <[RBerg@nclrights.org](mailto:RBerg@nclrights.org)>

**Sent:** Tuesday, June 20, 2023 2:34 PM

**To:** LaMagna, Patricia <[Patricia.LaMagna@azag.gov](mailto:Patricia.LaMagna@azag.gov)>; Corcoran, Aubrey Joy <[AubreyJoy.Corcoran@azag.gov](mailto:AubreyJoy.Corcoran@azag.gov)>; Dan Struck <[DStruck@strucklove.com](mailto:DStruck@strucklove.com)>; Dana Keene <[dkeene@strucklove.com](mailto:dkeene@strucklove.com)>; Nick Acedo <[NAcedo@strucklove.com](mailto:NAcedo@strucklove.com)>; Anne Orcutt <[AORcutt@strucklove.com](mailto:AORcutt@strucklove.com)>

**Cc:** Anderson, Barrett <[banderson@cooley.com](mailto:banderson@cooley.com)>; Martin, Christopher L. <[cmartin@cooley.com](mailto:cmartin@cooley.com)>; Taylor, Jessica L.

<[jtaylor@cooley.com](mailto:jtaylor@cooley.com)>; Ainbinder, Stephanie <[sainbinder@cooley.com](mailto:sainbinder@cooley.com)>; Colin Proksel <[cproksel@omlaw.com](mailto:cproksel@omlaw.com)>; Payslie Bowman <[pbowman@omlaw.com](mailto:pbowman@omlaw.com)>

**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Hi Patricia,

I am writing to follow up on the below. We would appreciate a response before the oral argument on Thursday so we can be prepared to discuss the case status with the Court if it comes up.

Thanks,  
Rachel

**From:** LaMagna, Patricia <[Patricia.LaMagna@azag.gov](mailto:Patricia.LaMagna@azag.gov)>

**Sent:** Monday, June 12, 2023 1:06 PM

**To:** Rachel Berg <[RBerg@ncirights.org](mailto:RBerg@ncirights.org)>; Corcoran, Aubrey Joy <[AubreyJoy.Corcoran@azag.gov](mailto:AubreyJoy.Corcoran@azag.gov)>; Dan Struck <[DStruck@strucklove.com](mailto:DStruck@strucklove.com)>; DKeene@strucklove.com; Nick Acedo <[NAcedo@strucklove.com](mailto:NAcedo@strucklove.com)>; [aorcutt@strucklove.com](mailto:aorcutt@strucklove.com)

**Cc:** Anderson, Barrett <[banderson@cooley.com](mailto:banderson@cooley.com)>; Martin, Christopher L. <[cmartin@cooley.com](mailto:cmartin@cooley.com)>; Taylor, Jessica L. <[jtaylor@cooley.com](mailto:jtaylor@cooley.com)>; Ainbinder, Stephanie <[sainbinder@cooley.com](mailto:sainbinder@cooley.com)>; Colin Proksel <[cproksel@omlaw.com](mailto:cproksel@omlaw.com)>; Payslie Bowman <[pbowman@omlaw.com](mailto:pbowman@omlaw.com)>

**Subject:** RE: 4:20-cv-00484-JAS Roe et al v. Herrington et al

Ms. Berg,

Please let me confer with counsel and the client- we will respond on both issues as soon as possible.

Thank you,  
Patricia

**Patricia Cracchiolo LaMagna**

Assistant Attorney General



Arizona Attorney General Kris Mayes

15 S 15<sup>th</sup> Ave

Phoenix, AZ 85007

Mailing Address:

2005 N. Central Avenue

Phoenix, AZ 85004

Desk: 602-542-8854

[patricia.lamagna@azag.gov](mailto:patricia.lamagna@azag.gov)

<http://www.azag.gov>

**From:** Rachel Berg [<mailto:RBerg@ncirights.org>]

**Sent:** Friday, June 09, 2023 12:50 PM

**To:** LaMagna, Patricia; Corcoran, Aubrey Joy; Dan Struck; [DKeene@strucklove.com](mailto:DKeene@strucklove.com); Nick Acedo; [aorcutt@strucklove.com](mailto:aorcutt@strucklove.com)

**Cc:** Anderson, Barrett; Martin, Christopher L.; Taylor, Jessica L.; Ainbinder, Stephanie; Colin Proksel; Payslie Bowman

**Subject:** 4:20-cv-00484-JAS Roe et al v. Herrington et al

Counsel,

We did not receive any expert disclosures or expert reports from you, which were both due on June 5. Please confirm that you did not send these items. Please also confirm that you are not planning to depose Plaintiffs' experts.

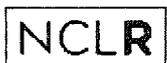
Thanks,  
Rachel

**Rachel H. Berg | Staff Attorney**

*(Pronouns: she/her)*

[rberg@nclrights.org](mailto:rberg@nclrights.org)

(415) 343-7679 office



**National Center for Lesbian Rights**

*Feminist Founded, Advocates for All*

[nclrights.org](http://nclrights.org) | [Facebook](#) | [Twitter](#) | [Instagram](#)

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---

# **EXHIBIT 2**

1 Patrick Gunn (admitted *Pro Hac Vice*)  
COOLEY LLP  
2 101 California Street, 5th Floor  
San Francisco, California 94111-5800  
3 Telephone: +1 415 693 2070  
Facsimile: pgunn@cooley.com  
4 Email: pgunn@cooley.com

5 Mary O’Grady (011434)  
Colin Proksel (034133)  
6 Payslie Bowman (035418)  
OSBORN MALEDON, P.A.  
7 2929 North Central Avenue, 21st Floor  
Phoenix, Arizona 85012-2793  
8 Telephone: (602) 640-9000  
Facsimile: (602) 640-9050  
9 Email: mogrady@omlaw.com  
Email: cproksel@omlaw.com  
10 Email: pbowman@omlaw.com

11 *Attorneys for Plaintiffs, Proposed Class, and Non-*  
*Party Subpoena Recipient*  
12 Additional counsel listed on the following page

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

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

19 Plaintiff,

20 v.

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

24 Defendant.

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

**NON-PARTY DR. RANDI  
ETTNER’S RESPONSES AND  
OBJECTIONS TO DEFENDANT  
DON HERRINGTON’S SUBPOENA  
TO PRODUCE DOCUMENTS,  
INFORMATION, OR OBJECTS OR  
TO PERMIT INSPECTION OF  
PREMISES IN A CIVIL ACTION**

25  
26  
27  
28

1 Barrett J. Anderson (admitted *Pro Hac Vice*)  
Jessica Taylor (admitted *Pro Hac Vice*)  
2 COOLEY LLP  
10265 Science Center Drive  
3 San Diego, California 92121-1117  
Telephone: (858) 550-6000  
4 Facsimile: (858) 550-6420  
Email: banderson@cooley.com  
5 Email: jtaylor@cooley.com

6 Rachel Berg (admitted *Pro Hac Vice*)  
NATIONAL CENTER FOR LESBIAN RIGHTS  
7 870 Market Street, Suite 370  
San Francisco, California 94102  
8 Telephone: (415) 343-7679  
Facsimile: (415) 392-8442  
9 Email: rberg@nclrights.org

10 *Attorneys for Plaintiffs, Proposed Class, and Non-*  
11 *Party Subpoena Recipient*

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1 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, non-party Dr. Randi  
2 Ettner hereby responds and objects to Defendant Don Herrington's ("Defendant")  
3 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of  
4 Premises in a Civil Action dated July 17, 2023 (the "Subpoena") as follows:

5 **I. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

6 Dr. Ettner makes the following general objections, whether or not separately set forth  
7 in response to each Request, to each and every instruction, definition, and document request  
8 made in Defendant's Subpoena:

9 1. Dr. Ettner objects generally to all Definitions, Instructions, and Document  
10 Requests inclusive, insofar as each such request seeks production of documents or  
11 information protected by the attorney-client privilege, the work product doctrine, or any  
12 other applicable privilege. Such documents or information shall not be produced in  
13 response to the Subpoena, and any inadvertent production thereof shall not be deemed a  
14 waiver of any privilege or right with respect to such documents or information or of any  
15 work product doctrine that may attach thereto.

16 2. Dr. Ettner objects generally to all Definitions, Instruments, and Document  
17 requests inclusive, insofar as each such request seeks production of a privilege log.  
18 Preparation and production of a privilege log would impose an undue burden on Dr. Ettner,  
19 without providing material benefit to Defendant.

20 3. Dr. Ettner objects to the definition of "You" and "Your" to the extent that it  
21 includes any persons or entities other than Dr. Ettner because such a broad definition would  
22 impose and undue burden on Dr. Ettner, without providing material benefit to Defendant.

23 **II. GENERAL OBJECTIONS**

24 In addition to the objections set forth separately in each of the responses below  
25 ("Specific Objections"), Dr. Ettner responses to the Requests are subject to the following  
26 General Objections and reservation of rights ("General Objections"), to which reference is  
27 hereby made with respect to each such response, whether or not specifically referenced  
28 therein.

1           1.     Dr. Ettner objects to the Requests as improper to the extent that they seek to  
2 impose on Dr. Ettner obligations greater than that required by law, statute, the Federal Rules  
3 of Civil Procedure, the Local Rules for the United States District Court for the District of  
4 Arizona, or any other court order in this matter, and/or would subject Dr. Ettner to  
5 unreasonable and undue annoyance, oppression, burden, and expense.

6           2.     Dr. Ettner objects to the Requests to the extent they demand the production  
7 of documents that are privileged or otherwise protected from disclosure under applicable  
8 law. To the extent that any information protected from disclosure by an applicable privilege  
9 or immunity is inadvertently provided in response to a Request, that production shall not be  
10 deemed a waiver of the applicable privilege or protection, claim of confidentiality, or other  
11 objection. Fed. R. Evid. 502(b). If Dr. Ettner notifies Defendant that it disclosed privileged  
12 or protected information inadvertently or otherwise, regardless of whether Dr. Ettner took  
13 reasonable steps to prevent the disclosure or rectify the error, Defendant must immediately  
14 confirm full destruction of the inadvertently produced privileged material, including any  
15 copies. In all events, such destruction must occur within three (3) business days of receipt  
16 of notice or discovery of the inadvertent production. In addition, Defendant must not use  
17 such items for any purpose until further order of the Court. If an inadvertent production or  
18 identification of information is deemed by this court to be a waiver of any privilege or  
19 immunity, the waiver shall be a limited waiver pertaining to that information only.

20           3.     Dr. Ettner objects to each of the Requests to the extent they seek to elicit  
21 information that comprises confidential information of a person or entity other than Dr.  
22 Ettner. Dr. Ettner will not produce third-party confidential information.

23           4.     Dr. Ettner objects to each of the Requests to the extent they seek to elicit  
24 personal and/or private information of individuals that is prevented from disclosure by  
25 Federal or State laws or by agreement. Dr. Ettner will not produce personal and private  
26 information of third parties.

27           5.     Dr. Ettner objects to each of the Requests to the extent they seek documents  
28 that may already be in Defendant's possession, custody, or control.

1           6.     Dr. Ettner objects to each of the Requests to the extent that they require Dr.  
2 Ettner to do more than use reasonable diligence in locating responsive documents.

3           7.     Dr. Ettner objects to the Requests to the extent they seek information or  
4 documents that are available from public sources, records, other third parties, or that are  
5 otherwise equally available to Defendant on the grounds that any such Request  
6 unreasonably subjects Dr. Ettner to undue burden, oppression, and expense.

7           8.     Dr. Ettner objects to the Requests as overbroad and unduly burdensome to the  
8 extent they require Dr. Ettner to create or restore data or documents or process or review  
9 any unreasonably large amount of data.

10          9.     Dr. Ettner objects to the Requests to the extent that they seek cumulative or  
11 duplicative information, including to the extent the Requests are cumulative or duplicative  
12 of any discovery obtained and/or sought by Defendant in the above-captioned case.

13          10.    Dr. Ettner's response to the Requests, if any, will be made without waiver of,  
14 and with the intentional preservation of:

15           a.     All objections as to the competence, relevance, materiality, privilege,  
16 confidentiality, authenticity, and admissibility as evidence in any aspect of this or any other  
17 legal proceeding;

18           b.     The right to object to any ground to the use of information or documents, or  
19 the subject matter thereof, in any aspect of this or any other legal proceeding;

20           c.     The right to object at any time to further Requests for production on any  
21 ground; and

22           d.     The right to revise correct, supplement, or clarify the responses and objections  
23 propounded herein at any time.

24          11.    Identification or production of documents or information responsive to any  
25 discovery Request should not be construed as:

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1 a. An admission or stipulation that the information or documents or its content  
2 or subject matter is properly discoverable or relevant;

3 b. A waiver by Dr. Ettner or any of objections as set forth herein; or

4 c. An agreement that Requests for similar information will be treated in a similar  
5 manner.

6 12. Dr. Ettner expressly reserves the right to supplement, clarify, revise, or correct  
7 any or all of the responses and objections herein, and to assert additional objections or  
8 privileges, in one or more subsequent supplemental response(s).

9 13. These General Objections shall be deemed incorporated in full into each of  
10 the individual responses set forth below.

11 **III. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**  
12 **REQUEST FOR PRODUCTION NO. 1:**

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

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

18 Dr. Ettner objects to this Request because it is overly broad and unduly burdensome  
19 because, among other things, it seeks a list of “all cases and matters,” which includes topics  
20 that are not relevant to this case. Dr. Ettner further objects to this Request because it seeks  
21 information outside the scope of what is required under Fed. R. Civ. P. 26. Dr. Ettner further  
22 objects to this Request to the extent the documents are already in Defendant’s possession,  
23 custody, or control. Dr. Ettner objects to the phrase “documents pertaining thereto” as  
24 vague and ambiguous. Dr. Ettner further objects to this Request to the extent the Request  
25 seeks documents that are not relevant to any cause of action or defense of any party in this  
26 action and because it is not proportional to the needs of this case. Dr. Ettner further objects  
27 to this Request to the extent it seeks documents that are privileged and confidential. Dr.  
28 Ettner further objects to this Request because the deadline to respond to this Request is after

1 the discovery deadline in this case and therefore the Subpoena is untimely. Dr. Ettner  
2 further objects to this Request because Defendant has awarded Dr. Ettner only fourteen days  
3 to reply, which is insufficient time to comply with the Subpoena and places an unreasonable  
4 strain, burden, and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to  
5 this request because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is  
6 currently pending before the Court.

7 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
8 willing to meet and confer regarding this Request.

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

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

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

13 Dr. Ettner objects to this Request because it is overly broad and unduly burdensome  
14 to the extent it seeks "all correspondence or communications." Dr. Ettner further objects to  
15 this Request because the words "correspondence" and "communications" are vague and  
16 ambiguous. Dr. Ettner further objects to this Request to the extent it seeks documents that  
17 are privileged and confidential. Dr. Ettner further objects to this Request to the extent it  
18 seeks documents that are not relevant to any cause of action or defense of any party in this  
19 action and because it is not proportional to the needs of this case. Dr. Ettner further objects  
20 to this Request because the deadline to respond to this Request is after the discovery  
21 deadline in this case and therefore the Subpoena is untimely. Dr. Ettner further objects to  
22 this Request because Defendant has awarded Dr. Ettner only fourteen days to reply, which  
23 is insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
24 and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request  
25 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
26 pending before the Court.

27 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
28 willing to meet and confer regarding this Request.

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

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

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

5 Dr. Ettner objects to this Request because it is overly broad and unduly burdensome  
6 to the extent it seeks “all time sheets and billing statements.” Dr. Ettner further objects to  
7 this Request because it seeks documents that are not relevant to any cause of action or  
8 defense of any party in this action and because it is not proportional to the needs of this  
9 case. Dr. Ettner further objects to this Request to the extent it seeks documents that are  
10 privileged and confidential. Dr. Ettner further objects to this Request because the deadline  
11 to respond to this Request is after the discovery deadline in this case and therefore the  
12 Subpoena is untimely. Dr. Ettner further objects to this Request because Defendant has  
13 awarded Dr. Ettner only fourteen days to reply, which is insufficient time to comply with  
14 the Subpoena and places an unreasonable strain, burden, and expense on Dr. Ettner to  
15 attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed a motion  
16 to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

17 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Ettner is  
18 willing to meet and confer regarding this Request.

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

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

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

24 Dr. Ettner objects to this Request because it is overly broad and unduly burdensome  
25 and not proportional to the needs of the case to the extent it seeks “all correspondence or  
26 communications.” Dr. Ettner further objects to this Request because the words  
27 “correspondence” and “communications” are vague and ambiguous. Dr. Ettner further  
28 objects to this Request because the phrase “declined to provide for your consideration” is

1 vague and ambiguous. Dr. Ettner further objects to this Request to the extent it seeks  
2 documents that are privileged and confidential. Dr. Ettner further objects to this Request  
3 because the deadline to respond to this Request is after the discovery deadline in this case  
4 and therefore the Subpoena is untimely. Dr. Ettner further objects to this Request because  
5 Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient time to  
6 comply with the Subpoena and places an unreasonable strain, burden, and expense on Dr.  
7 Ettner to attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed  
8 a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

9 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
10 willing to meet and confer regarding this Request.

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

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

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

18 Dr. Ettner objects to this Request because it is overly broad and unduly burdensome  
19 and not proportional to the needs of the case. Dr. Ettner further objects to this Request  
20 because the phrase "declined to provide for your consideration" is vague and ambiguous.  
21 Dr. Ettner further objects to this Request to the extent it seeks documents that are privileged  
22 and confidential or protected by work product privilege. Dr. Ettner further objects to this  
23 Request to the extent the documents are already in Defendant's possession, custody, or  
24 control. Dr. Ettner further objects to this Request because the deadline to respond to this  
25 Request is after the discovery deadline in this case and therefore the Subpoena is untimely.  
26 Dr. Ettner further objects to this Request because Defendant has awarded Dr. Ettner only  
27 fourteen days to reply, which is insufficient time to comply with the Subpoena and places  
28 an unreasonable strain, burden, and expense on Dr. Ettner to attempt to do so. Dr. Ettner

1 further objects to this request because Plaintiffs filed a motion to quash on July 25, 2023,  
2 Dkt. 206, which is currently pending before the Court.

3 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
4 willing to meet and confer regarding this Request.

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

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

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

8 Dr. Ettner objects to this Request because it is overly broad and unduly burdensome  
9 and not proportional to the needs of this case. Dr. Ettner further objects to this Request to  
10 the extent it seeks documents that are privileged and confidential or protected by work  
11 product privilege. Dr. Ettner further objects to this Request because the deadline to respond  
12 to this Request is after the discovery deadline in this case and therefore the Subpoena is  
13 untimely. Dr. Ettner further objects to this Request because Defendant has awarded Dr.  
14 Ettner only fourteen days to reply, which is insufficient time to comply with the Subpoena  
15 and places an unreasonable strain, burden, and expense on Dr. Ettner to attempt to do so.  
16 Dr. Ettner further objects to this request because Plaintiffs filed a motion to quash on July  
17 25, 2023, Dkt. 206, which is currently pending before the Court.

18 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
19 willing to meet and confer regarding this Request.

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

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

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

25 Dr. Ettner objects to this Request as overly broad and unduly burdensome and  
26 because it is not proportional to the needs of this case. Dr. Ettner further objects to this  
27 Request because the phrase "tangible physical items" is vague and ambiguous. Dr. Ettner  
28 further objects to the phrase "pertaining to your engagement" as vague and ambiguous. Dr.

1 Ettner further objects to this Request to the extent it seeks documents that are privileged  
2 and confidential or protected by work product privilege. Dr. Ettner further objects to this  
3 Request because the deadline to respond to this Request is after the discovery deadline in  
4 this case and therefore the Subpoena is untimely. Dr. Ettner further objects to this Request  
5 because Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient  
6 time to comply with the Subpoena and places an unreasonable strain, burden, and expense  
7 on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request because Plaintiffs  
8 filed a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the  
9 Court.

10 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
11 willing to meet and confer regarding this Request.

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

13 All statements, affidavits, depositions, deposition summaries, or other descriptions  
14 of any witness testimony or recollections which you have received, reviewed, and/or  
15 interpreted in connection with or pertaining to your engagement or with the formulation of  
16 any opinions to which you expect to testify in this case.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

18 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
19 proportional to the needs of this case because it seeks "All statements, affidavits,  
20 depositions, deposition summaries, or other descriptions of any witness testimony or  
21 recollections." Dr. Ettner further objects to this Request because the phrase "in connection  
22 with or pertaining to your engagement or with the formulation of any opinions" is vague  
23 and ambiguous. Dr. Ettner further objects to this Request to the extent it seeks documents  
24 that are privileged and confidential or protected by work product privilege. Dr. Ettner  
25 further objects to this Request because the deadline to respond to this Request is after the  
26 discovery deadline in this case and therefore the Subpoena is untimely. Dr. Ettner further  
27 objects to this Request because Defendant has awarded Dr. Ettner only fourteen days to  
28 reply, which is insufficient time to comply with the Subpoena and places an unreasonable

1 strain, burden, and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to  
2 this request because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is  
3 currently pending before the Court.

4 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
5 willing to meet and confer regarding this Request.

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

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

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

11 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
12 proportional to the needs of this case because it seeks "All photographs, drawings,  
13 diagrams, models, audio recordings, or video recordings." Dr. Ettner further objects to this  
14 Request to the extent it seeks documents that are privileged and confidential or protected  
15 by work product privilege. Dr. Ettner further objects to this Request because the deadline  
16 to respond to this Request is after the discovery deadline in this case and therefore the  
17 Subpoena is untimely. Dr. Ettner further objects to this Request because Defendant has  
18 awarded Dr. Ettner only fourteen days to reply, which is insufficient time to comply with  
19 the Subpoena and places an unreasonable strain, burden, and expense on Dr. Ettner to  
20 attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed a motion  
21 to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

22 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
23 willing to meet and confer regarding this Request.

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

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

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

28 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not

1 proportional to the needs of the case. Dr. Ettner further objects to this Request to the extent  
2 it seeks documents that are privileged and confidential or protected by work product  
3 privilege. Dr. Ettner further objects to this Request because it is vague and ambiguous. Dr.  
4 Ettner further objects to this Request to the extent the documents are already in Defendant's  
5 possession, custody, or control and/or are accessible to the general public. Dr. Ettner further  
6 objects to this Request because the deadline to respond to this Request is after the discovery  
7 deadline in this case and therefore the Subpoena is untimely. Dr. Ettner further objects to  
8 this Request because Defendant has awarded Dr. Ettner only fourteen days to reply, which  
9 is insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
10 and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request  
11 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
12 pending before the Court.

13 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
14 willing to meet and confer regarding this Request.

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

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

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

20 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
21 proportional to the needs of the case because it seeks "All correspondence or  
22 communications." Dr. Ettner further objects to this Request to the extent it seeks documents  
23 that are privileged and confidential or protected by work product privilege. Dr. Ettner  
24 further objects to this Request because the phrase "correspondence or communications" is  
25 vague and ambiguous. Dr. Ettner further objects to this Request because the phrase  
26 "identify any assumptions which Plaintiffs' counsel either provided or declined to provide  
27 for your consideration" is vague and ambiguous. Dr. Ettner further objects to this Request  
28 because the deadline to respond to this Request is after the discovery deadline in this case

1 and therefore the Subpoena is untimely. Dr. Ettner further objects to this Request because  
2 Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient time to  
3 comply with the Subpoena and places an unreasonable strain, burden, and expense on Dr.  
4 Ettner to attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed  
5 a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

6 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
7 willing to meet and confer regarding this Request.

8 **REQUEST FOR PRODUCTION NO. 12:**

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

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

15 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
16 proportional to the needs of the case because it seeks "All Documents and/or things which  
17 you (or those acting on your behalf or under your supervision) have prepared or generated."  
18 Dr. Ettner further objects to this Request to the extent it seeks documents that are privileged  
19 and confidential or protected by work product privilege. Dr. Ettner further objects to this  
20 Request because the phrase "prepared or generated in connection with your work relating  
21 to this case" is vague and ambiguous. Dr. Ettner further objects to this Request because the  
22 phrase "relating to any assumptions Plaintiffs' counsel either provided or declined to  
23 provide for your consideration" is vague and ambiguous. Dr. Ettner further objects to this  
24 Request to the extent the documents are already in Defendant's possession, custody, or  
25 control and/or are accessible to the general public. Dr. Ettner further objects to this Request  
26 because the deadline to respond to this Request is after the discovery deadline in this case  
27 and therefore the Subpoena is untimely. Dr. Ettner further objects to this Request because  
28 Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient time to

1 comply with the Subpoena and places an unreasonable strain, burden, and expense on Dr.  
2 Ettner to attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed  
3 a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

4 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
5 willing to meet and confer regarding this Request.

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

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

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

11 Dr. Ettner objects to this Request as overly broad and unduly burdensome because it  
12 seeks "All transcripts of testimony . . . relating in any manner" and lacks a temporal scope.  
13 Dr. Ettner further objects to this Request because the phrase "relating in any manner to the  
14 topics and opinions about which you expect to testify and/or give opinions in this case" is  
15 vague and ambiguous. Dr. Ettner further objects to this Request to the extent the documents  
16 are already in Defendant's possession, custody, or control and/or are accessible to the  
17 general public. Dr. Ettner further objects to this Request to the extent it seeks documents  
18 that are privileged and confidential. Dr. Ettner further objects to this Request to the extent  
19 it seeks confidential information. Dr. Ettner further objects to this Request to the extent it  
20 seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to  
21 this Request because the deadline to respond to this Request is after the discovery deadline  
22 in this case and therefore the Subpoena is untimely. Dr. Ettner further objects to this  
23 Request because Defendant has awarded Dr. Ettner only fourteen days to reply, which is  
24 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
25 and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request  
26 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
27 pending before the Court.

28 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is

1 willing to meet and confer regarding this Request.

2 **REQUEST FOR PRODUCTION NO. 14:**

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

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

7 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
8 proportional to the needs of the case because it seeks “All reports, affidavits, or declarations  
9 . . . relating in any manner” and lacks a temporal scope. Dr. Ettner further objects to this  
10 Request because the phrase “relating in any manner to the topics and opinions about which  
11 you expect to testify and/or give opinions in this case” is vague and ambiguous. Dr. Ettner  
12 further objects to this Request to the extent the documents are already in Defendant’s  
13 possession, custody, or control and/or are accessible to the general public. Dr. Ettner further  
14 objects to this Request to the extent it seeks documents that are privileged and confidential.  
15 Dr. Ettner further objects to this Request to the extent it seeks confidential information. Dr.  
16 Ettner further objects to this Request to the extent it seeks documents outside of the scope  
17 of Fed. R. Civ. P. 26. Dr. Ettner further objects to this Request because the deadline to  
18 respond to this Request is after the discovery deadline in this case and therefore the  
19 Subpoena is untimely. Dr. Ettner further objects to this Request because Defendant has  
20 awarded Dr. Ettner only fourteen days to reply, which is insufficient time to comply with  
21 the Subpoena and places an unreasonable strain, burden, and expense on Dr. Ettner to  
22 attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed a motion  
23 to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

24 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Ettner is  
25 willing to meet and confer regarding this Request.

26 **REQUEST FOR PRODUCTION NO. 15:**

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

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

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

4 Dr. Ettner objects to this Request as overly broad and unduly burdensome because it  
5 seeks “All publications, papers or documents” and lacks a temporal scope. Dr. Ettner  
6 further objects to this Request because it is vague and ambiguous. Dr. Ettner further objects  
7 to this Request to the extent the Request seeks documents that are not relevant to any cause  
8 of action or defense of any party in this action nor proportional to the needs of this case.  
9 Dr. Ettner further objects to this Request to the extent it seeks documents that are privileged  
10 and confidential. Dr. Ettner further objects to this Request to the extent the documents are  
11 already in Defendant’s possession, custody, or control and/or are accessible to the general  
12 public. Dr. Ettner further objects to this Request to the extent it seeks confidential  
13 information. Dr. Ettner further objects to this Request to the extent it seeks documents  
14 outside of the scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to this Request because  
15 the deadline to respond to this Request is after the discovery deadline in this case and  
16 therefore the Subpoena is untimely. Dr. Ettner further objects to this Request because  
17 Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient time to  
18 comply with the Subpoena and places an unreasonable strain, burden, and expense on Dr.  
19 Ettner to attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed  
20 a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

21 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Ettner is  
22 willing to meet and confer regarding this Request.

23 **REQUEST FOR PRODUCTION NO. 16:**

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

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

28 Dr. Ettner objects to this Request as overly broad and unduly burdensome because it

1 seeks “All documentation of any and all training classes you have attended, taught, assisted,  
2 facilitated or been involved in any way with at any time” and contains an overly broad and  
3 unduly burdensome temporal scope that is not proportional to the needs of this case. Dr.  
4 Ettner further objects to this Request because it is vague and ambiguous. Dr. Ettner further  
5 objects to this Request to the extent it seeks documents that are privileged and confidential.  
6 Dr. Ettner further objects to this Request to the extent the Request seeks documents that are  
7 not relevant to any cause of action or defense of any party in this action nor proportional to  
8 the needs of this case. Dr. Ettner further objects to this Request to the extent it seeks  
9 confidential information. Dr. Ettner further objects to this Request to the extent it seeks  
10 documents outside of the scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to this  
11 Request because the deadline to respond to this Request is after the discovery deadline in  
12 this case and therefore the Subpoena is untimely. Dr. Ettner further objects to this Request  
13 because Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient  
14 time to comply with the Subpoena and places an unreasonable strain, burden, and expense  
15 on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request because Plaintiffs  
16 filed a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the  
17 Court.

18 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Ettner is  
19 willing to meet and confer regarding this Request.

20 **REQUEST FOR PRODUCTION NO. 17:**

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

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

24 Dr. Ettner objects to this Request as overly broad and unduly burdensome because it  
25 seeks “All publications, texts, reports, books, treatises, papers, and/or other authorities of  
26 any nature . . . in forming any of the opinions in this case.” Dr. Ettner further objects to this  
27 Request because the phrase “specifically relied” is vague and ambiguous. Dr. Ettner further  
28 objects to this Request because the phrase “any of the opinions” is vague and ambiguous.

1 Dr. Ettner further objects to this Request to the extent the Request seeks documents that are  
2 not relevant to any cause of action or defense of any party in this action nor proportional to  
3 the needs of this case. Dr. Ettner further objects to this Request to the extent the documents  
4 are already in Defendant’s possession, custody, or control and/or are accessible to the  
5 general public. Dr. Ettner further objects to this Request to the extent it seeks documents  
6 outside of the scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to this Request because  
7 the deadline to respond to this Request is after the discovery deadline in this case and  
8 therefore the Subpoena is untimely. Dr. Ettner further objects to this Request because  
9 Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient time to  
10 comply with the Subpoena and places an unreasonable strain, burden, and expense on Dr.  
11 Ettner to attempt to do so. Dr. Ettner further objects to this Request to the extent it seeks  
12 documents that are privileged and confidential. Dr. Ettner further objects to this request  
13 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
14 pending before the Court.

15 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Ettner is  
16 willing to meet and confer regarding this Request.

17 **REQUEST FOR PRODUCTION NO. 18:**

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

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

21 Dr. Ettner objects to this Request as overly broad and unduly burdensome because it  
22 seeks “All standards, regulations, or other documents which reflect standards of care.” Dr.  
23 Ettner further objects to the phrase “conduct at issue in this case” as vague and ambiguous.  
24 Dr. Ettner further objects to this Request to the extent the Request seeks documents that are  
25 not relevant to any cause of action or defense of any party in this action nor proportional to  
26 the needs of this case. Dr. Ettner further objects to this Request to the extent it seeks  
27 documents that are privileged and confidential. Dr. Ettner further objects to this Request to  
28 the extent the documents are already in Defendant’s possession, custody, or control and/or

1 are accessible to the general public. Dr. Ettner further objects to this Request to the extent  
2 it seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to  
3 this Request because the deadline to respond to this Request is after the discovery deadline  
4 in this case and therefore the Subpoena is untimely. Dr. Ettner further objects to this  
5 Request because Defendant has awarded Dr. Ettner only fourteen days to reply, which is  
6 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
7 and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request  
8 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
9 pending before the Court.

10 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
11 willing to meet and confer regarding this Request.

12 **REQUEST FOR PRODUCTION NO. 19:**

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

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

16 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
17 proportional to the needs of this case. Dr. Ettner further objects to this Request because the  
18 phrase "concerning the above-captioned litigation, not previously mentioned" is vague and  
19 ambiguous. Dr. Ettner further objects to this Request to the extent it seeks documents that  
20 are privileged and confidential. Dr. Ettner further objects to this Request to the extent it  
21 seeks confidential information. Dr. Ettner further objects to this Request to the extent it  
22 seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to  
23 this Request because the deadline to respond to this Request is after the discovery deadline  
24 in this case and therefore the Subpoena is untimely. Dr. Ettner further objects to this  
25 Request because Defendant has awarded Dr. Ettner only fourteen days to reply, which is  
26 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
27 and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request  
28 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently

1 pending before the Court.

2 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
3 willing to meet and confer regarding this Request.

4 **REQUEST FOR PRODUCTION NO. 20:**

5 Copies of any articles referenced in your report.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

7 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
8 proportional to the needs of the case because it seeks "any articles referenced." Dr. Ettner  
9 further objects to the phrase "any articles referenced" as vague and ambiguous. Dr. Ettner  
10 further objects to this Request to the extent the documents are already in Defendant's  
11 possession, custody, or control and/or are accessible to the general public. Dr. Ettner further  
12 objects to this Request to the extent it seeks documents outside of the scope of Fed. R. Civ.  
13 P. 26. Dr. Ettner further objects to this Request because the deadline to respond to this  
14 Request is after the discovery deadline in this case and therefore the Subpoena is untimely.  
15 Dr. Ettner further objects to this Request because Defendant has awarded Dr. Ettner only  
16 fourteen days to reply, which is insufficient time to comply with the Subpoena and places  
17 an unreasonable strain, burden, and expense on Dr. Ettner to attempt to do so. Dr. Ettner  
18 further objects to this Request to the extent it seeks documents that are privileged and  
19 confidential. Dr. Ettner further objects to this request because Plaintiffs filed a motion to  
20 quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

21 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
22 willing to meet and confer regarding this Request.

23 **REQUEST FOR PRODUCTION NO. 21:**

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

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

27 Dr. Ettner objects to this Request as overly broad and unduly burdensome because it  
28 seeks "All of your reports, disclosures, and testimony (whether in court or deposition)." Dr.

1 Ettner further objects to this Request to the extent the documents are already in Defendant's  
2 possession, custody, or control and/or are accessible to the general public. Dr. Ettner further  
3 objects to this Request to the extent it seeks documents that are privileged and confidential.  
4 Dr. Ettner further objects to this Request to the extent it seeks confidential information. Dr.  
5 Ettner further objects to this Request to the extent this Request seeks documents that are not  
6 relevant to any cause of action or defense of any party in this action nor proportional to the  
7 needs of this case. Dr. Ettner further objects to this Request to the extent it seeks documents  
8 outside of the scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to this Request because  
9 the deadline to respond to this Request is after the discovery deadline in this case and  
10 therefore the Subpoena is untimely. Dr. Ettner further objects to this Request because  
11 Defendant has awarded Dr. Ettner only fourteen days to reply, which is insufficient time to  
12 comply with the Subpoena and places an unreasonable strain, burden, and expense on Dr.  
13 Ettner to attempt to do so. Dr. Ettner further objects to this request because Plaintiffs filed  
14 a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

15 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
16 willing to meet and confer regarding this Request.

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

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

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

21 Dr. Ettner objects to this Request as overly broad and unduly burdensome. Dr. Ettner  
22 further objects to this Request because the phrase "served (in any capacity)" is vague and  
23 ambiguous. Dr. Ettner further objects because the Request seeks documents outside of the  
24 scope of Fed. R. Civ. P. 26. Dr. Ettner further objects to this Request because it lacks a  
25 temporal scope and therefore is overly broad and unduly burdensome and not proportional  
26 to the needs of the case. Dr. Ettner further objects to this Request to the extent the Request  
27 seeks documents that are not relevant to any cause of action or defense of any party in this  
28 action nor proportional to the needs of this case. Dr. Ettner further objects to this Request

1 to the extent it seeks documents that are privileged and confidential. Dr. Ettner further  
2 objects to this Request to the extent it seeks confidential information. Dr. Ettner further  
3 objects to this Request to the extent the documents are already in Defendant's possession,  
4 custody, or control and/or are accessible to the general public. Dr. Ettner further objects to  
5 this Request because the deadline to respond to this Request is after the discovery deadline  
6 in this case and therefore the Subpoena is untimely. Dr. Ettner further objects to this  
7 Request because Defendant has awarded Dr. Ettner only fourteen days to reply, which is  
8 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
9 and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request  
10 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
11 pending before the Court.

12 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
13 willing to meet and confer regarding this Request.

14 **REQUEST FOR PRODUCTION NO. 23:**

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

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

17 Dr. Ettner objects to this Request as overly broad and unduly burdensome and not  
18 proportional to the needs of the case because it seeks "All testimony" and lacks a temporal  
19 scope. Dr. Ettner further objects because the Request seeks documents outside of the scope  
20 of Fed. R. Civ. P. 26. Dr. Ettner further objects to this Request to the extent the Request  
21 seeks documents that are not relevant to any cause of action or defense of any party in this  
22 action nor proportional to the needs of this case. Dr. Ettner further objects to this Request  
23 to the extent it seeks documents that are privileged and confidential. Dr. Ettner further  
24 objects to this Request to the extent it seeks confidential information. Dr. Ettner further  
25 objects to this Request to the extent the documents are already in Defendant's possession,  
26 custody, or control and/or are accessible to the general public. Dr. Ettner further objects to  
27 this Request because the deadline to respond to this Request is after the discovery deadline  
28 in this case and therefore the Subpoena is untimely. Dr. Ettner further objects to this

1 Request because Defendant has awarded Dr. Ettner only fourteen days to reply, which is  
2 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
3 and expense on Dr. Ettner to attempt to do so. Dr. Ettner further objects to this request  
4 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
5 pending before the Court.

6 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Ettner is  
7 willing to meet and confer regarding this Request.

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1 Dated: July 31, 2023

OSBORN MALEDON, P.A.

2  
3 /s/Colin M. Proksel

Mary O'Grady (011434)

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9 Rachel Berg (admitted *Pro Hac Vice*)

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18 *Vice*)

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20 San Diego, California 92121-1117

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22 Email: jtaylor@cooley.com

23 *Attorneys for Plaintiffs, Proposed Class,*  
24 *and Non-party Subpoena Recipient*

**CERTIFICATE OF SERVICE**

THE FOREGOING was e-mailed this 31st day of July, 2023, to:

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/s/ Stephanie Ainbinder

# **EXHIBIT 3**

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11 *Attorneys for Plaintiffs, Proposed Class, and Non-*  
*Party Subpoena Recipient*  
12 Additional counsel listed on the following page

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

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

19 Plaintiff,

20 v.

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

24 Defendant.

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

**NON-PARTY DR. DANIEL  
SHUMER’S RESPONSES AND  
OBJECTIONS TO DEFENDANT  
DON HERRINGTON’S SUBPOENA  
TO PRODUCE DOCUMENTS,  
INFORMATION, OR OBJECTS OR  
TO PERMIT INSPECTION OF  
PREMISES IN A CIVIL ACTION**

1 Barrett J. Anderson (admitted *Pro Hac Vice*)  
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10 *Attorneys for Plaintiffs, Proposed Class, and Non-*  
*Party Subpoena Recipient*  
11  
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1 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, non-party Dr. Daniel  
2 Shumer hereby responds and objects to Defendant Don Herrington’s (“Defendant”)  
3 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of  
4 Premises in a Civil Action dated July 17, 2023 (the “Subpoena”) as follows:

5 **I. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

6 Dr. Shumer makes the following general objections, whether or not separately set  
7 forth in response to each Request, to each and every instruction, definition, and document  
8 request made in Defendant’s Subpoena:

9 1. Dr. Shumer objects generally to all Definitions, Instructions, and Document  
10 Requests inclusive, insofar as each such request seeks production of documents or  
11 information protected by the attorney-client privilege, the work product doctrine, or any  
12 other applicable privilege. Such documents or information shall not be produced in  
13 response to the Subpoena, and any inadvertent production thereof shall not be deemed a  
14 waiver of any privilege or right with respect to such documents or information or of any  
15 work product doctrine that may attach thereto.

16 2. Dr. Shumer objects generally to all Definitions, Instruments, and Document  
17 requests inclusive, insofar as each such request seeks production of a privilege log.  
18 Preparation and production of a privilege log would impose an undue burden on Dr.  
19 Shumer, without providing material benefit to Defendant.

20 3. Dr. Shumer objects to the definition of “You” and “Your” to the extent that it  
21 includes any persons or entities other than Dr. Shumer because such a broad definition  
22 would impose an undue burden on Dr. Shumer, without providing material benefit to  
23 Defendant.

24 **II. GENERAL OBJECTIONS**

25 In addition to the objections set forth separately in each of the responses below  
26 (“Specific Objections”), Dr. Shumer responses to the Requests are subject to the following  
27 General Objections and reservation of rights (“General Objections”), to which reference is  
28 hereby made with respect to each such response, whether or not specifically referenced

1 therein.

2 1. Dr. Shumer objects to the Requests as improper to the extent that they seek to  
3 impose on Dr. Shumer obligations greater than that required by law, statute, the Federal  
4 Rules of Civil Procedure, the Local Rules for the United States District Court for the District  
5 of Arizona, or any other court order in this matter, and/or would subject Dr. Shumer to  
6 unreasonable and undue annoyance, oppression, burden, and expense.

7 2. Dr. Shumer objects to the Requests to the extent they demand the production  
8 of documents that are privileged or otherwise protected from disclosure under applicable  
9 law. To the extent that any information protected from disclosure by an applicable privilege  
10 or immunity is inadvertently provided in response to a Request, that production shall not be  
11 deemed a waiver of the applicable privilege or protection, claim of confidentiality, or other  
12 objection. Fed. R. Evid. 502(b). If Dr. Shumer notifies Defendant that it disclosed  
13 privileged or protected information inadvertently or otherwise, regardless of whether Dr.  
14 Shumer took reasonable steps to prevent the disclosure or rectify the error, Defendant must  
15 immediately confirm full destruction of the inadvertently produced privileged material,  
16 including any copies. In all events, such destruction must occur within three (3) business  
17 days of receipt of notice or discovery of the inadvertent production. In addition, Defendant  
18 must not use such items for any purpose until further order of the Court. If an inadvertent  
19 production or identification of information is deemed by this court to be a waiver of any  
20 privilege or immunity, the waiver shall be a limited waiver pertaining to that information  
21 only.

22 3. Dr. Shumer objects to each of the Requests to the extent they seek to elicit  
23 information that comprises confidential information of a person or entity other than Dr.  
24 Shumer. Dr. Shumer will not produce third-party confidential information.

25 4. Dr. Shumer objects to each of the Requests to the extent they seek to elicit  
26 personal and/or private information of individuals that is prevented from disclosure by  
27 Federal or State laws or by agreement. Dr. Shumer will not produce personal and private  
28 information of third parties.

1           5.     Dr. Shumer objects to each of the Requests to the extent they seek documents  
2 that may already be in Defendant's possession, custody, or control.

3           6.     Dr. Shumer objects to each of the Requests to the extent that they require Dr.  
4 Shumer to do more than use reasonable diligence in locating responsive documents.

5           7.     Dr. Shumer objects to the Requests to the extent they seek information or  
6 documents that are available from public sources, records, other third parties, or that are  
7 otherwise equally available to Defendant on the grounds that any such Request  
8 unreasonably subjects Dr. Shumer to undue burden, oppression, and expense.

9           8.     Dr. Shumer objects to the Requests as overbroad and unduly burdensome to  
10 the extent they require Dr. Shumer to create or restore data or documents or process or  
11 review any unreasonably large amount of data.

12          9.     Dr. Shumer objects to the Requests to the extent that they seek cumulative or  
13 duplicative information, including to the extent the Requests are cumulative or duplicative  
14 of any discovery obtained and/or sought by Defendant in the above-captioned case.

15          10.    Dr. Shumer's response to the Requests, if any, will be made without waiver  
16 of, and with the intentional preservation of:

17           a.     All objections as to the competence, relevance, materiality, privilege,  
18 confidentiality, authenticity, and admissibility as evidence in any aspect of this or any other  
19 legal proceeding;

20           b.     The right to object to any ground to the use of information or documents, or  
21 the subject matter thereof, in any aspect of this or any other legal proceeding;

22           c.     The right to object at any time to further Requests for production on any  
23 ground; and

24           d.     The right to revise correct, supplement, or clarify the responses and objections  
25 propounded herein at any time.

26          11.    Identification or production of documents or information responsive to any  
27 discovery Request should not be construed as:  
28

1 a. An admission or stipulation that the information or documents or its content  
2 or subject matter is properly discoverable or relevant;

3 b. A waiver by Dr. Shumer or any of objections as set forth herein; or

4 c. An agreement that Requests for similar information will be treated in a similar  
5 manner.

6 12. Dr. Shumer expressly reserves the right to supplement, clarify, revise, or  
7 correct any or all of the responses and objections herein, and to assert additional objections  
8 or privileges, in one or more subsequent supplemental response(s).

9 13. These General Objections shall be deemed incorporated in full into each of  
10 the individual responses set forth below.

11 **III. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**  
12 **REQUEST FOR PRODUCTION NO. 1:**

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

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

18 Dr. Shumer objects to this Request because it is overly broad and unduly burdensome  
19 because, among other things, it seeks a list of “all cases and matters,” which includes topics  
20 that are not relevant to this case. Dr. Shumer further objects to this Request because it seeks  
21 information outside the scope of what is required under Fed. R. Civ. P. 26. Dr. Shumer  
22 further objects to this Request to the extent the documents are already in Defendant’s  
23 possession, custody, or control. Dr. Shumer objects to the phrase “documents pertaining  
24 thereto” as vague and ambiguous. Dr. Shumer further objects to this Request to the extent  
25 the Request seeks documents that are not relevant to any cause of action or defense of any  
26 party in this action and because it is not proportional to the needs of this case. Dr. Shumer  
27 further objects to this Request to the extent it seeks documents that are privileged and  
28 confidential. Dr. Shumer further objects to this Request because the deadline to respond to

1 this Request is after the discovery deadline in this case and therefore the Subpoena is  
2 untimely. Dr. Shumer further objects to this Request because Defendant has awarded Dr.  
3 Shumer only fourteen days to reply, which is insufficient time to comply with the Subpoena  
4 and places an unreasonable strain, burden, and expense on Dr. Shumer to attempt to do so.  
5 Dr. Shumer further objects to this request because Plaintiffs filed a motion to quash on July  
6 25, 2023, Dkt. 206, which is currently pending before the Court.

7 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
8 willing to meet and confer regarding this Request.

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

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

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

13 Dr. Shumer objects to this Request because it is overly broad and unduly burdensome  
14 to the extent it seeks "all correspondence or communications." Dr. Shumer further objects  
15 to this Request because the words "correspondence" and "communications" are vague and  
16 ambiguous. Dr. Shumer further objects to this Request to the extent it seeks documents that  
17 are privileged and confidential. Dr. Shumer further objects to this Request to the extent it  
18 seeks documents that are not relevant to any cause of action or defense of any party in this  
19 action and because it is not proportional to the needs of this case. Dr. Shumer further objects  
20 to this Request because the deadline to respond to this Request is after the discovery  
21 deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further objects to  
22 this Request because Defendant has awarded Dr. Shumer only fourteen days to reply, which  
23 is insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
24 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
25 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
26 pending before the Court.

27 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
28 willing to meet and confer regarding this Request.

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

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

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

5 Dr. Shumer objects to this Request because it is overly broad and unduly burdensome  
6 to the extent it seeks “all time sheets and billing statements.” Dr. Shumer further objects to  
7 this Request because it seeks documents that are not relevant to any cause of action or  
8 defense of any party in this action and because it is not proportional to the needs of this  
9 case. Dr. Shumer further objects to this Request to the extent it seeks documents that are  
10 privileged and confidential. Dr. Shumer further objects to this Request because the deadline  
11 to respond to this Request is after the discovery deadline in this case and therefore the  
12 Subpoena is untimely. Dr. Shumer further objects to this Request because Defendant has  
13 awarded Dr. Shumer only fourteen days to reply, which is insufficient time to comply with  
14 the Subpoena and places an unreasonable strain, burden, and expense on Dr. Shumer to  
15 attempt to do so. Dr. Shumer further objects to this request because Plaintiffs filed a motion  
16 to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

17 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is  
18 willing to meet and confer regarding this Request.

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

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

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

24 Dr. Shumer objects to this Request because it is overly broad and unduly burdensome  
25 and not proportional to the needs of the case to the extent it seeks “all correspondence or  
26 communications.” Dr. Shumer further objects to this Request because the words  
27 “correspondence” and “communications” are vague and ambiguous. Dr. Shumer further  
28 objects to this Request because the phrase “declined to provide for your consideration” is

1 vague and ambiguous. Dr. Shumer further objects to this Request to the extent it seeks  
2 documents that are privileged and confidential. Dr. Shumer further objects to this Request  
3 because the deadline to respond to this Request is after the discovery deadline in this case  
4 and therefore the Subpoena is untimely. Dr. Shumer further objects to this Request because  
5 Defendant has awarded Dr. Shumer only fourteen days to reply, which is insufficient time  
6 to comply with the Subpoena and places an unreasonable strain, burden, and expense on  
7 Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request because Plaintiffs  
8 filed a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the  
9 Court.

10 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
11 willing to meet and confer regarding this Request.

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

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

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

19 Dr. Shumer objects to this Request because it is overly broad and unduly burdensome  
20 and not proportional to the needs of the case. Dr. Shumer further objects to this Request  
21 because the phrase "declined to provide for your consideration" is vague and ambiguous.  
22 Dr. Shumer further objects to this Request to the extent it seeks documents that are  
23 privileged and confidential or protected by work product privilege. Dr. Shumer further  
24 objects to this Request to the extent the documents are already in Defendant's possession,  
25 custody, or control. Dr. Shumer further objects to this Request because the deadline to  
26 respond to this Request is after the discovery deadline in this case and therefore the  
27 Subpoena is untimely. Dr. Shumer further objects to this Request because Defendant has  
28 awarded Dr. Shumer only fourteen days to reply, which is insufficient time to comply with

1 the Subpoena and places an unreasonable strain, burden, and expense on Dr. Shumer to  
2 attempt to do so. Dr. Shumer further objects to this request because Plaintiffs filed a motion  
3 to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

4 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
5 willing to meet and confer regarding this Request.

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

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

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

9 Dr. Shumer objects to this Request because it is overly broad and unduly burdensome  
10 and not proportional to the needs of this case. Dr. Shumer further objects to this Request to  
11 the extent it seeks documents that are privileged and confidential or protected by work  
12 product privilege. Dr. Shumer further objects to this Request because the deadline to  
13 respond to this Request is after the discovery deadline in this case and therefore the  
14 Subpoena is untimely. Dr. Shumer further objects to this Request because Defendant has  
15 awarded Dr. Shumer only fourteen days to reply, which is insufficient time to comply with  
16 the Subpoena and places an unreasonable strain, burden, and expense on Dr. Shumer to  
17 attempt to do so. Dr. Shumer further objects to this request because Plaintiffs filed a motion  
18 to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

19 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
20 willing to meet and confer regarding this Request.

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

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

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

26 Dr. Shumer objects to this Request as overly broad and unduly burdensome and  
27 because it is not proportional to the needs of this case. Dr. Shumer further objects to this  
28 Request because the phrase "tangible physical items" is vague and ambiguous. Dr. Shumer

1 further objects to the phrase “pertaining to your engagement” as vague and ambiguous. Dr.  
2 Shumer further objects to this Request to the extent it seeks documents that are privileged  
3 and confidential or protected by work product privilege. Dr. Shumer further objects to this  
4 Request because the deadline to respond to this Request is after the discovery deadline in  
5 this case and therefore the Subpoena is untimely. Dr. Shumer further objects to this Request  
6 because Defendant has awarded Dr. Shumer only fourteen days to reply, which is  
7 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
8 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
9 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
10 pending before the Court.

11 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is  
12 willing to meet and confer regarding this Request.

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

14 All statements, affidavits, depositions, deposition summaries, or other descriptions  
15 of any witness testimony or recollections which you have received, reviewed, and/or  
16 interpreted in connection with or pertaining to your engagement or with the formulation of  
17 any opinions to which you expect to testify in this case.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

19 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
20 proportional to the needs of this case because it seeks “All statements, affidavits,  
21 depositions, deposition summaries, or other descriptions of any witness testimony or  
22 recollections.” Dr. Shumer further objects to this Request because the phrase “in connection  
23 with or pertaining to your engagement or with the formulation of any opinions” is vague  
24 and ambiguous. Dr. Shumer further objects to this Request to the extent it seeks documents  
25 that are privileged and confidential or protected by work product privilege. Dr. Shumer  
26 further objects to this Request because the deadline to respond to this Request is after the  
27 discovery deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further  
28 objects to this Request because Defendant has awarded Dr. Shumer only fourteen days to

1 reply, which is insufficient time to comply with the Subpoena and places an unreasonable  
2 strain, burden, and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects  
3 to this request because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which  
4 is currently pending before the Court.

5 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
6 willing to meet and confer regarding this Request.

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

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

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

12 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
13 proportional to the needs of this case because it seeks "All photographs, drawings,  
14 diagrams, models, audio recordings, or video recordings." Dr. Shumer further objects to  
15 this Request to the extent it seeks documents that are privileged and confidential or  
16 protected by work product privilege. Dr. Shumer further objects to this Request because  
17 the deadline to respond to this Request is after the discovery deadline in this case and  
18 therefore the Subpoena is untimely. Dr. Shumer further objects to this Request because  
19 Defendant has awarded Dr. Shumer only fourteen days to reply, which is insufficient time  
20 to comply with the Subpoena and places an unreasonable strain, burden, and expense on  
21 Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request because Plaintiffs  
22 filed a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the  
23 Court.

24 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
25 willing to meet and confer regarding this Request.

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

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

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

2 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
3 proportional to the needs of the case. Dr. Shumer further objects to this Request to the  
4 extent it seeks documents that are privileged and confidential or protected by work product  
5 privilege. Dr. Shumer further objects to this Request because it is vague and ambiguous.  
6 Dr. Shumer further objects to this Request to the extent the documents are already in  
7 Defendant's possession, custody, or control and/or are accessible to the general public. Dr.  
8 Shumer further objects to this Request because the deadline to respond to this Request is  
9 after the discovery deadline in this case and therefore the Subpoena is untimely. Dr. Shumer  
10 further objects to this Request because Defendant has awarded Dr. Shumer only fourteen  
11 days to reply, which is insufficient time to comply with the Subpoena and places an  
12 unreasonable strain, burden, and expense on Dr. Shumer to attempt to do so. Dr. Shumer  
13 further objects to this request because Plaintiffs filed a motion to quash on July 25, 2023,  
14 Dkt. 206, which is currently pending before the Court.

15 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
16 willing to meet and confer regarding this Request.

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

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

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

22 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
23 proportional to the needs of the case because it seeks "All correspondence or  
24 communications." Dr. Shumer further objects to this Request to the extent it seeks  
25 documents that are privileged and confidential or protected by work product privilege. Dr.  
26 Shumer further objects to this Request because the phrase "correspondence or  
27 communications" is vague and ambiguous. Dr. Shumer further objects to this Request  
28 because the phrase "identify any assumptions which Plaintiffs' counsel either provided or

1 declined to provide for your consideration” is vague and ambiguous. Dr. Shumer further  
2 objects to this Request because the deadline to respond to this Request is after the discovery  
3 deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further objects to  
4 this Request because Defendant has awarded Dr. Shumer only fourteen days to reply, which  
5 is insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
6 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
7 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
8 pending before the Court.

9 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is  
10 willing to meet and confer regarding this Request.

11 **REQUEST FOR PRODUCTION NO. 12:**

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

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

18 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
19 proportional to the needs of the case because it seeks “All Documents and/or things which  
20 you (or those acting on your behalf or under your supervision) have prepared or generated.”  
21 Dr. Shumer further objects to this Request to the extent it seeks documents that are  
22 privileged and confidential or protected by work product privilege. Dr. Shumer further  
23 objects to this Request because the phrase “prepared or generated in connection with your  
24 work relating to this case” is vague and ambiguous. Dr. Shumer further objects to this  
25 Request because the phrase “relating to any assumptions Plaintiffs’ counsel either provided  
26 or declined to provide for your consideration” is vague and ambiguous. Dr. Shumer further  
27 objects to this Request to the extent the documents are already in Defendant’s possession,  
28 custody, or control and/or are accessible to the general public. Dr. Shumer further objects

1 to this Request because the deadline to respond to this Request is after the discovery  
2 deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further objects to  
3 this Request because Defendant has awarded Dr. Shumer only fourteen days to reply, which  
4 is insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
5 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
6 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
7 pending before the Court.

8 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
9 willing to meet and confer regarding this Request.

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

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

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

15 Dr. Shumer objects to this Request as overly broad and unduly burdensome because  
16 it seeks "All transcripts of testimony . . . relating in any manner" and lacks a temporal scope.  
17 Dr. Shumer further objects to this Request because the phrase "relating in any manner to  
18 the topics and opinions about which you expect to testify and/or give opinions in this case"  
19 is vague and ambiguous. Dr. Shumer further objects to this Request to the extent the  
20 documents are already in Defendant's possession, custody, or control and/or are accessible  
21 to the general public. Dr. Shumer further objects to this Request to the extent it seeks  
22 documents that are privileged and confidential. Dr. Shumer further objects to this Request  
23 to the extent it seeks confidential information. Dr. Shumer further objects to this Request  
24 to the extent it seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Shumer  
25 further objects to this Request because the deadline to respond to this Request is after the  
26 discovery deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further  
27 objects to this Request because Defendant has awarded Dr. Shumer only fourteen days to  
28 reply, which is insufficient time to comply with the Subpoena and places an unreasonable

1 strain, burden, and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects  
2 to this request because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which  
3 is currently pending before the Court.

4 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
5 willing to meet and confer regarding this Request.

6 **REQUEST FOR PRODUCTION NO. 14:**

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

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

11 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
12 proportional to the needs of the case because it seeks "All reports, affidavits, or declarations  
13 . . . relating in any manner" and lacks a temporal scope. Dr. Shumer further objects to this  
14 Request because the phrase "relating in any manner to the topics and opinions about which  
15 you expect to testify and/or give opinions in this case" is vague and ambiguous. Dr. Shumer  
16 further objects to this Request to the extent the documents are already in Defendant's  
17 possession, custody, or control and/or are accessible to the general public. Dr. Shumer  
18 further objects to this Request to the extent it seeks documents that are privileged and  
19 confidential. Dr. Shumer further objects to this Request to the extent it seeks confidential  
20 information. Dr. Shumer further objects to this Request to the extent it seeks documents  
21 outside of the scope of Fed. R. Civ. P. 26. Dr. Shumer further objects to this Request  
22 because the deadline to respond to this Request is after the discovery deadline in this case  
23 and therefore the Subpoena is untimely. Dr. Shumer further objects to this Request because  
24 Defendant has awarded Dr. Shumer only fourteen days to reply, which is insufficient time  
25 to comply with the Subpoena and places an unreasonable strain, burden, and expense on  
26 Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request because Plaintiffs  
27 filed a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the  
28 Court.

1 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
2 willing to meet and confer regarding this Request.

3 **REQUEST FOR PRODUCTION NO. 15:**

4 All publications, papers or documents relating to any listing in your resume or  
5 curricula vitae which specifically pertain to or relate to the topics and opinions about which  
6 you expect to testify in this case, including, but not necessarily limited to all lesson plans,  
7 outlines, notes, handouts, presentation, etc.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

9 Dr. Shumer objects to this Request as overly broad and unduly burdensome because  
10 it seeks "All publications, papers or documents" and lacks a temporal scope. Dr. Shumer  
11 further objects to this Request because it is vague and ambiguous. Dr. Shumer further  
12 objects to this Request to the extent the Request seeks documents that are not relevant to  
13 any cause of action or defense of any party in this action nor proportional to the needs of  
14 this case. Dr. Shumer further objects to this Request to the extent it seeks documents that  
15 are privileged and confidential. Dr. Shumer further objects to this Request to the extent it  
16 seeks confidential information. Dr. Shumer further objects to this Request to the extent it  
17 seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Shumer further objects this  
18 Request to to the extent the documents are already in Defendant's possession, custody, or  
19 control and/or are accessible to the general public. Dr. Shumer further objects to this  
20 Request because the deadline to respond to this Request is after the discovery deadline in  
21 this case and therefore the Subpoena is untimely. Dr. Shumer further objects to this Request  
22 because Defendant has awarded Dr. Shumer only fourteen days to reply, which is  
23 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
24 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
25 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
26 pending before the Court.

27 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
28 willing to meet and confer regarding this Request.

1 **REQUEST FOR PRODUCTION NO. 16:**

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

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

6 Dr. Shumer objects to this Request as overly broad and unduly burdensome because  
7 it seeks “All documentation of any and all training classes you have attended, taught,  
8 assisted, facilitated or been involved in any way with at any time” and contains an overly  
9 broad and unduly burdensome temporal scope that is not proportional to the needs of this  
10 case. Dr. Shumer further objects to this Request because it is vague and ambiguous. Dr.  
11 Shumer further objects to this Request to the extent it seeks documents that are privileged  
12 and confidential. Dr. Shumer further objects to this Request to the extent the Request seeks  
13 documents that are not relevant to any cause of action or defense of any party in this action  
14 nor proportional to the needs of this case. Dr. Shumer further objects to this Request to the  
15 extent it seeks confidential information. Dr. Shumer further objects to this Request to the  
16 extent it seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Shumer further  
17 objects to this Request because the deadline to respond to this Request is after the discovery  
18 deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further objects to  
19 this Request because Defendant has awarded Dr. Shumer only fourteen days to reply, which  
20 is insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
21 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
22 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
23 pending before the Court.

24 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is  
25 willing to meet and confer regarding this Request.

26 **REQUEST FOR PRODUCTION NO. 17:**

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

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Dr. Shumer objects to this Request as overly broad and unduly burdensome because it seeks “All publications, texts, reports, books, treatises, papers, and/or other authorities of any nature . . . in forming any of the opinions in this case.” Dr. Shumer further objects to this Request because the phrase “specifically relied” is vague and ambiguous. Dr. Shumer further objects to this Request because the phrase “any of the opinions” is vague and ambiguous. Dr. Shumer further objects to this Request to the extent the Request seeks documents that are not relevant to any cause of action or defense of any party in this action nor proportional to the needs of this case. Dr. Shumer further objects to this Request to the extent the documents are already in Defendant’s possession, custody, or control and/or are accessible to the general public. Dr. Shumer further objects to this Request to the extent it seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Shumer further objects to this Request because the deadline to respond to this Request is after the discovery deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further objects to this Request because Defendant has awarded Dr. Shumer only fourteen days to reply, which is insufficient time to comply with the Subpoena and places an unreasonable strain, burden, and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this Request to the extent it seeks documents that are privileged and confidential. Dr. Shumer further objects to this request because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is willing to meet and confer regarding this Request.

**REQUEST FOR PRODUCTION NO. 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.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Dr. Shumer objects to this Request as overly broad and unduly burdensome because it seeks “All standards, regulations, or other documents which reflect standards of care.”

1 Dr. Shumer further objects to the phrase “conduct at issue in this case” as vague and  
2 ambiguous. Dr. Shumer further objects to this Request to the extent the Request seeks  
3 documents that are not relevant to any cause of action or defense of any party in this action  
4 nor proportional to the needs of this case. Dr. Shumer further objects to this Request to the  
5 extent it seeks documents that are privileged and confidential. Dr. Shumer further objects  
6 to this Request to the extent the documents are already in Defendant’s possession, custody,  
7 or control and/or are accessible to the general public. Dr. Shumer further objects to this  
8 Request to the extent it seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr.  
9 Shumer further objects to this Request because the deadline to respond to this Request is  
10 after the discovery deadline in this case and therefore the Subpoena is untimely. Dr. Shumer  
11 further objects to this Request because Defendant has awarded Dr. Shumer only fourteen  
12 days to reply, which is insufficient time to comply with the Subpoena and places an  
13 unreasonable strain, burden, and expense on Dr. Shumer to attempt to do so. Dr. Shumer  
14 further objects to this request because Plaintiffs filed a motion to quash on July 25, 2023,  
15 Dkt. 206, which is currently pending before the Court.

16 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is  
17 willing to meet and confer regarding this Request.

18 **REQUEST FOR PRODUCTION NO. 19:**

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

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

22 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
23 proportional to the needs of this case. Dr. Shumer further objects to this Request because  
24 the phrase “concerning the above-captioned litigation, not previously mentioned” is vague  
25 and ambiguous. Dr. Shumer further objects to this Request to the extent it seeks documents  
26 that are privileged and confidential. Dr. Shumer further objects to this Request to the extent  
27 it seeks confidential information. Dr. Shumer further objects to this Request to the extent  
28 it seeks documents outside of the scope of Fed. R. Civ. P. 26. Dr. Shumer further objects

1 to this Request because the deadline to respond to this Request is after the discovery  
2 deadline in this case and therefore the Subpoena is untimely. Dr. Shumer further objects to  
3 this Request because Defendant has awarded Dr. Shumer only fourteen days to reply, which  
4 is insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
5 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
6 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
7 pending before the Court.

8 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
9 willing to meet and confer regarding this Request.

10 **REQUEST FOR PRODUCTION NO. 20:**

11 Copies of any articles referenced in your report.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

13 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
14 proportional to the needs of the case because it seeks "any articles referenced." Dr. Shumer  
15 further objects to the phrase "any articles referenced" as vague and ambiguous. Dr. Shumer  
16 further objects to this Request to the extent the documents are already in Defendant's  
17 possession, custody, or and control and/or are accessible to the general public. Dr. Shumer  
18 further objects to this Request to the extent it seeks documents outside of the scope of Fed.  
19 R. Civ. P. 26. Dr. Shumer further objects to this Request because the deadline to respond  
20 to this Request is after the discovery deadline in this case and therefore the Subpoena is  
21 untimely. Dr. Shumer further objects to this Request because Defendant has awarded Dr.  
22 Shumer only fourteen days to reply, which is insufficient time to comply with the Subpoena  
23 and places an unreasonable strain, burden, and expense on Dr. Shumer to attempt to do so.  
24 Dr. Shumer further objects to this Request to the extent it seeks documents that are  
25 privileged and confidential. Dr. Shumer further objects to this request because Plaintiffs  
26 filed a motion to quash on July 25, 2023, Dkt. 206, which is currently pending before the  
27 Court.

28 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is

1 willing to meet and confer regarding this Request.

2 **REQUEST FOR PRODUCTION NO. 21:**

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

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

6 Dr. Shumer objects to this Request as overly broad and unduly burdensome because  
7 it seeks “All of your reports, disclosures, and testimony (whether in court or deposition).”  
8 Dr. Shumer further objects to this Request to the extent the documents are already in  
9 Defendant’s possession, custody, or control and/or are accessible to the general public. Dr.  
10 Shumer further objects to this Request to the extent it seeks documents that are privileged  
11 and confidential. Dr. Shumer further objects to this Request to the extent it seeks  
12 confidential information. Dr. Shumer further objects to this Request to the extent this  
13 Request seeks documents that are not relevant to any cause of action or defense of any party  
14 in this action nor proportional to the needs of this case. Dr. Shumer further objects to this  
15 Request because the deadline to respond to this Request is after the discovery deadline in  
16 this case and therefore the Subpoena is untimely. Dr. Shumer further objects to this Request  
17 because Defendant has awarded Dr. Shumer only fourteen days to reply, which is  
18 insufficient time to comply with the Subpoena and places an unreasonable strain, burden,  
19 and expense on Dr. Shumer to attempt to do so. Dr. Shumer further objects to this request  
20 because Plaintiffs filed a motion to quash on July 25, 2023, Dkt. 206, which is currently  
21 pending before the Court.

22 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is  
23 willing to meet and confer regarding this Request.

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

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

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

28 Dr. Shumer objects to this Request as overly broad and unduly burdensome. Dr.

1 Shumer further objects to this Request because the phrase “served (in any capacity)” is  
2 vague and ambiguous. Dr. Shumer further objects because the Request seeks documents  
3 outside of the scope of Fed. R. Civ. P. 26. Dr. Shumer further objects to this Request  
4 because it lacks a temporal scope and therefore is overly broad and unduly burdensome and  
5 not proportional to the needs of the case. Dr. Shumer further objects to this Request to the  
6 extent it seeks documents that are not relevant to any cause of action or defense of any party  
7 in this action nor proportional to the needs of this case. Dr. Shumer further objects to this  
8 Request to the extent it seeks documents that are privileged and confidential. Dr. Shumer  
9 further objects to this Request to the extent the Request seeks confidential information. Dr.  
10 Shumer further objects to this Request to the extent the documents are already in  
11 Defendant’s possession, custody, or control and/or are accessible to the general public. Dr.  
12 Shumer further objects to this Request to the extent it seeks documents outside of the scope  
13 of Fed. R. Civ. P. 26. Dr. Shumer further objects to this Request because the deadline to  
14 respond to this Request is after the discovery deadline in this case and therefore the  
15 Subpoena is untimely. Dr. Shumer further objects to this Request because Defendant has  
16 awarded Dr. Shumer only fourteen days to reply, which is insufficient time to comply with  
17 the Subpoena and places an unreasonable strain, burden, and expense on Dr. Shumer to  
18 attempt to do so. Dr. Shumer further objects to this request because Plaintiffs filed a motion  
19 to quash on July 25, 2023, Dkt. 206, which is currently pending before the Court.

20 In the event the Court denies Plaintiffs’ Motion to Quash, Dkt. 206, Dr. Shumer is  
21 willing to meet and confer regarding this Request.

22 **REQUEST FOR PRODUCTION NO. 23:**

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

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

25 Dr. Shumer objects to this Request as overly broad and unduly burdensome and not  
26 proportional to the needs of the case because it seeks “All testimony” and lacks a temporal  
27 scope. Dr. Shumer further objects because the Request seeks documents outside of the  
28 scope of Fed. R. Civ. P. 26. Dr. Shumer further objects to this Request to the extent the

1 Request seeks documents that are not relevant to any cause of action or defense of any party  
2 in this action nor proportional to the needs of this case. Dr. Shumer further objects to this  
3 Request to the extent it seeks documents that are privileged and confidential. Dr. Shumer  
4 further objects to this Request to the extent the Request seeks confidential information. Dr.  
5 Shumer further objects to this Request to the extent the documents are already in  
6 Defendant's possession, custody, or control and/or are accessible to the general public. Dr.  
7 Shumer further objects to this Request because the deadline to respond to this Request is  
8 after the discovery deadline in this case and therefore the Subpoena is untimely. Dr. Shumer  
9 further objects to this Request because Defendant has awarded Dr. Shumer only fourteen  
10 days to reply, which is insufficient time to comply with the Subpoena and places an  
11 unreasonable strain, burden, and expense on Dr. Shumer to attempt to do so. Dr. Shumer  
12 further objects to this request because Plaintiffs filed a motion to quash on July 25, 2023,  
13 Dkt. 206, which is currently pending before the Court.

14 In the event the Court denies Plaintiffs' Motion to Quash, Dkt. 206, Dr. Shumer is  
15 willing to meet and confer regarding this Request.

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1 Dated: July 31, 2023

OSBORN MALEDON, P.A.

2  
3 /s/Colin M. Proksel

4 Mary O'Grady (011434)  
5 Colin Proksel (034133)  
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**CERTIFICATE OF SERVICE**

THE FOREGOING was e-mailed this 31st day of July, 2023, to:

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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

**[PROPOSED] ORDER DENYING  
PLAINTIFFS' MOTION TO  
QUASH SUBPOENA OR FOR A  
PROTECTIVE ORDER (DKT. 206)**

After reviewing Defendant's Response to Plaintiffs' Motion to Quash Subpoena or for a Protective Order, and good cause appearing, it hereby ordered denying Plaintiffs' Motion to Quash Subpoena or for a Protective Order.