

1 Charles S. LiMandri, SBN 110841
 2 cslimandri@limandri.com
 3 Paul M. Jonna, SBN 265389
 4 pjonna@limandri.com
 5 Mark D. Myers, SBN 235719
 6 mmyers@limandri.com
 7 Jeffrey M. Trissell, SBN 292480
 8 jtrissell@limandri.com
 9 Milan L. Brandon II, SBN 326953
 10 mbrandon@limandri.com
 11 LiMANDRI & JONNA LLP
 12 P.O. Box 9120
 13 Rancho Santa Fe, CA 92067
 14 Telephone: (858) 759-9930
 15 Facsimile: (858) 759-9938

Thomas Brejcha, *pro hac vice**
 tbrejcha@thomasmoresociety.org
 Peter Breen, *pro hac vice**
 pbreen@thomasmorsociety.org
 THOMAS MORE SOCIETY
 309 W. Washington St., Ste. 1250
 Chicago, IL 60606
 Tel: (312) 782-1680
 *Application forthcoming

Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an
 16 individual, and LORI ANN WEST, an
 17 individual,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity as
 21 President of the EUSD Board of
 22 Education, et al.,

23 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**Plaintiffs’ Opposition to Defendants
 Newsom’s and Bonta’s *Ex Parte*
 Application for a Protective Order
 Staying Discovery Pending Ruling on
 their Motions to Dismiss**

Mag. Judge: Hon. Valerie E. Torres
 Courtroom: 14B

Action Filed: April 27, 2024

INTRODUCTION

1
2 This is the second time that the defendants have filed an improper, unilateral
3 discovery motion. The last time, Magistrate Judge Crawford summarily denied the
4 motion without prejudice. *See* ECF No. 56. Here, the denial should be with prejudice
5 and Defendants Newsom and Bonta should be admonished to comply with this
6 Court’s Chambers Rules going forward. Under those Rules, “[*e*]x parte motions are
7 appropriate only in exigent circumstances when a party is not reachable or otherwise
8 refuses to participate in the preparation of a Joint Motion.” Hon. Valerie E. Torres,
9 U.S. Magistrate Judge, Civil Chambers Rules, § XI (Feb. 20, 2024). But, as stated in
10 DAG Soichet’s declaration, Defendants Newsom and Bonta have been contemplating
11 (and Plaintiffs have been repeatedly rejecting) a discovery stay since at least February
12 14, 2024, *see* ECF No. 103-2, at ¶¶7-10 & Ex.1—after Plaintiffs advised them that
13 their initial disclosures were due on March 4, 2024. *See* ECF No. 98-1 at 190 (citing
14 Fed. R. Civ. P. 26(a)(1)(D)).

15 Further, Defendants Newsom’s and Bonta’s *ex parte* motion is essentially a
16 motion for reconsideration of the denial of a discovery stay, pending their motion for
17 reconsideration of Judge Benitez’s orders. On February 20, 2024, Defendants Newsom
18 and Bonta moved to vacate the ENE and CMC (along with all accompanying dates,
19 such as the initial disclosures deadline), and moved for it to be eventually reset “within
20 45 days of Defendants Newsom and Bonta filing Answers to the FAC.” ECF No. 92 at
21 5. This Court only granted that motion in part, continuing the ENE and CMC from
22 February 28 to April 12—not tied to when Defendants Newsom and Bonta would
23 ultimately Answer. ECF No. 93. In that order, the Court also set a March 22, 2024
24 deadline for Plaintiffs and Defendants Newsom and Bonta to hold their Rule 26(f)
25 conference, and an April 5, 2024 deadline for Defendants Newsom and Bonta to serve
26 their initial disclosures. ECF No. 93 at 6.

27 Thus, the parties should have held their Rule 26(f) conference by March 22,
28 2024. Instead, at the parties’ scheduled March 20 conference, Defendants Newsom

1 and Bonta merely stated their position that discovery discussions were premature
2 because they were planning to file a motion for a discovery stay. Plaintiffs would not go
3 along with this attempt to evade the Court’s scheduling order and immediately re-
4 served identical discovery that had already been propounded on Defendants Newsom
5 and Bonta—but had been withdrawn pending informal discussions. *See* ECF No. 103-
6 2, at ¶¶10-12 & Exs.2-5; *see also* Jonna Decl., ¶¶6-11 & Exs. 4-9. Defendants Newsom
7 and Bonta apparently neither want to participate in discovery, disclosures, or otherwise
8 comply with this Court’s orders.

9 But such a bare desire is, by itself, insufficient. “The Federal Rules of Civil
10 Procedure do not automatically stay discovery when a potentially dispositive motion is
11 pending.” *See Rutledge v. ADP, Inc.*, No. 22-cv-898, 2023 WL 2977343, at *1 (S.D. Cal.
12 Apr. 17, 2023). Rather, the Court must take a “preliminary peek” at the pending
13 motion to determine whether a stay is warranted. *Id.* at *2 & n.1. Here, as explained
14 below—Judge Benitez already engaged in that “preliminary peek” when he ordered
15 Plaintiffs to add Defendants Newsom and Bonta to this case. *See* ECF No. 72, Minute
16 Order; *see also* ECF No. 75, Transcript at 45:15-16, 46:21-23 (Plaintiffs arguing that
17 there was no need to add Newsom and Bonta, but Judge Benitez ordering it anyway).
18 Under Judge Benitez’s “preliminary peek,” they are proper defendants.

19 So far, in response to this Court’s denial of their request to continue the
20 ENE/CMC and related dates indefinitely, Defendants Newsom and Bonta have
21 engaged in self-help. This should not be rewarded. Thus, the Court should both deny
22 their motion for a discovery stay and admonish them to participate in the case.

23 **FACTUAL & PROCEDURAL HISTORY**

24 **A. PRE-LITIGATION HISTORY**

25 Plaintiffs Elizabeth Mirabelli and Lori Ann West are long-time and devoted
26 educators, teaching seventh grade English and eighth grade physical education,
27 respectively, at Rincon Middle School within the Escondido Union School District
28 (“EUSD”). They greatly love their work and, in their several decades teaching middle

1 school children, they have received numerous accolades. ECF No. 80, 1st Amend.
2 Compl., ¶¶78-93. But with the 2022-2023 school year, they discovered that they were
3 expected to deceive parents by withholding information about a child’s gender
4 identity. *Id.* at ¶¶120-51 & Exs.1-9. Presenting as a different gender in public is
5 normally a reasoned decision made by families in consultation with psychologists.
6 However, EUSD ordered that children alone can make the decision whether to
7 “socially transition” and that under the child’s “Right to Privacy,” teachers had to
8 avoid “outing” a child to his parents. *Id.* at ¶¶120-51, 211-15 & Exs.1-5, 7-9.

9 This greatly bothered both Plaintiffs Mirabelli and West because, both morally
10 and religiously, they know that keeping this sort of critical information from parents is
11 wrong. *Id.* at ¶¶78-114 & Exs.24-25. Moreover, in seeking the best for their gender
12 incongruent students, Plaintiffs believe that life-altering decisions must be left in the
13 hands of parents, not children or the government. *Id.* Thus, on October 11, 2022,
14 Plaintiffs submitted requests for a religious accommodation from the requirement that
15 they withhold a students’ gender identity from their parents. *See id.* at pp.271-72 (Ex.
16 27), pp.283-86 (Ex. 28). EUSD denied Plaintiffs’ request, stating that it was required
17 to follow state law as interpreted by the California Department of Education (“CDE”)
18 in a Frequently Asked Questions page (the “FAQs”). *Id.* at 267-268, 279-80.

19 **B. PLAINTIFFS FILE THIS FEDERAL CIVIL RIGHTS ACTION &**
20 **IMMEDIATELY MOVE FOR A PRELIMINARY INJUNCTION**

21 Due to the denial of their religious accommodation request, on April 27, 2023,
22 Plaintiffs initiated this action. ECF No. 1, Compl. Plaintiffs’ complaint asserts three
23 U.S.C. § 1983 claims for violation of Free Exercise of Religion or Free Speech rights
24 and one claim for declaratory relief that the policies violate Parental Rights. ECF No.
25 80, 1st Amend. Compl., ¶¶249-318. As official-capacity defendants, Plaintiffs named
26 the superintendent and each member of the governing board of the Escondido Union
27 School District (5-member board) and the California Department of Education (11-
28 member board). *Id.* at ¶¶22-29, 37-49. Plaintiffs also named several individual-capacity

1 defendants. *Id.* at ¶¶30-33. Plaintiffs named the CDE’s State Superintendent and State
2 Board members as defendants in light of EUSD’s reference to the CDE. Plaintiffs also
3 explained that the CDE’s interpretation of both state and federal law was completely
4 flawed. *See id.* at 18-20 (discussing parental rights under the federal constitution), *id.* at
5 46-48 (privacy rights under the California Constitution and the Education Code).

6 Immediately after filing suit, Plaintiffs moved for a preliminary injunction. ECF
7 No. 5. The EUSD Defendants and the CDE Defendants, in response, separately
8 moved to dismiss. ECF Nos. 17, 25. On September 14, 2023, the Court granted
9 Plaintiffs’ motion for a preliminary injunction, and denied the two pending motions to
10 dismiss. ECF No. 42. In most significant part, the Order held that the Parental
11 Exclusion Policies violate the Fourteenth Amendment rights of parents, and were not
12 required by California state law. *See id.* at 14:26-20:28. Thus, the Order states that
13 “[t]he reasons proffered by the defendants for the policy pass neither the strict
14 scrutiny *nor the rational basis tests.*” *Id.* at 27:11-12 (*italics added*).

15 **C. ALL OF THE DEFENDANTS ATTEMPT TO BLAME EACH**
16 **OTHER OR NON-PARTIES, SO JUDGE BENITEZ ORDERS**
17 **ADDITIONAL PARTIES ADDED**

18 Once this lawsuit was filed, all of the defendants immediately attempted to place
19 the blame for the Parental Exclusion Policies on each other, or non-parties. In response
20 to Plaintiffs’ motion for a preliminary injunction, the EUSD Defendants stated that
21 “[t]he California Department of Education Requires the Policy.” ECF No. 16 at
22 p.7:14-18. The CDE Defendants argued that the CDE was irrelevant to the case,
23 stating that “EUSD is subject to general laws on nondiscrimination, unrelated to
24 whether CDE has any FAQs on the subject.” ECF No. 25-1 at p.14:4-5.

25 Further, at the same time that Judge Benitez was considering Plaintiffs’ motion
26 for a preliminary injunction (filed in May 2023, granted in September 2023), California
27 was considering how to respond to several school districts which refused to adopt what
28 the State calls a “Privacy Policy” and what Plaintiffs term a “Parental Exclusion

1 Policy.” Chino Valley Unified School District was the first to refuse to follow the
2 State’s directives requiring Parental Exclusion Policies, on July 20, 2023. *See* ECF No.
3 36 at pp.35-40. In response, Governor Newsom held a press conference on the first day
4 of school, in which he stated that “the assault on the LGBTQ community, the assault
5 on the trans community, as I take very, very seriously. It has been a big cause in my
6 life,” and that he was working with the Assembly’s LGBT Caucus on remedial
7 legislation. *See* ECF No. 98 at 14:11-15:3 (citing ECF No. 98-1 at 40, Transcript of
8 August 14, 2023 Press Conference). Despite how seriously Governor Newsom takes
9 “the assault on the trans community,” *id.*, after meeting with the LGBT caucus, their
10 bill was paused. ECF No. 98-1 at 67. Instead of legislation, on August 28, 2023,
11 Attorney General Bonta filed a complaint against Chino Valley Unified School District
12 in California Superior Court. *See* ECF No. 97 at 6.

13 On August 30, Judge Benitez held his hearing on the parties’ cross-motions. At
14 that hearing, his very first question sought to clarify whether the CDE or the EUSD
15 was right: “So which is it? Is the [California Department of Education] FAQ binding
16 on the school district or not?” ECF No. 39 at 3:18-19. Yet again the defendants pointed
17 the finger at each other. *See id.* at 4:1-14, 4:22-5:5, 38:17-20. When the Attorney
18 General’s lawsuit against the Chino Valley Unified School District was brought to
19 Judge Benitez’s attention, he found it “troubling” and stated that “we shouldn’t
20 litigate cases sort of piecemeal.” *Id.* at 15:7, 17:18-21. But the CDE Defendants stressed
21 that “[t]he Attorney General is acting in its own capacity as the State’s chief law
22 enforcement officer.” *Id.* at 16:9-11.

23 Then, at the January 8, 2024, hearing on the CDE Defendants’ motion for
24 judgment on the pleadings, they continued to argue that the FAQs were not binding.
25 *See* ECF No. 98 at 17:7-18:5 (citing ECF No. 75, Transcript, at 4:5-5:24). After going in
26 circles with the CDE Defendants, attempting to understand how there was a
27 meaningful difference between the statements (1) the Privacy Clause of the California
28 Constitution is binding, and the FAQs accurately describe what it requires, and (2)

1 the FAQs are binding, *see id.* at 5:25-14:21, Judge Benitez ultimately stated that the
2 Attorney General—because he was prosecuting Chino valley Unified School
3 District—needed to become a named defendant: “I think we’ve gone far enough. I
4 think you need to name them. I think you need to bring them in. And then, that way,
5 we can have everybody who can possibly be responsible, if you will, and who can be
6 bound. Right?” *Id.* at 54:25-55:8. As such, Judge Benitez ordered “Plaintiff to
7 amend/serve the complaint to include the Attorney General and the State of
8 California.” ECF No. 72.

9 **D. PLAINTIFFS ATTEMPT TO BEGIN DISCOVERY, BUT FACE**
10 **CONSTANT STONEWALLING**

11 Plaintiffs, the EUSD Defendants, and the CDE Defendants held their Rule 26(f)
12 conference on January 4, 2024. But then, on January 8, 2024, Judge Benitez ordered
13 Governor Newsom and Attorney General Bonta added as defendants in this action.
14 ECF Nos. 72, 79. So Plaintiffs decided to wait until they were added before serving
15 written discovery. In January 2024, Plaintiffs, the CDE Defendants, and the EUSD
16 Defendants exchanged their initial disclosures. Jonna Decl., ¶5 & Exs.2-3.

17 On February 9, 2024, Plaintiffs served their first round of written discovery.
18 With respect to all state-level defendants, Plaintiffs served identical discovery. Jonna
19 Decl., ¶6 & Exs.4-7. Then, on February 20, 2024, Defendants Newsom and Bonta
20 filed a motion to continue the ENE and CMC to after their forthcoming motions to
21 dismiss were denied. ECF No. 92. This Court granted that motion in part, and denied
22 it in part, continuing the ENE and CMC from February 28 to April 12, continuing the
23 deadline for them to serve initial disclosures from March 4 to April 5, and setting a
24 March 22 deadline for a Rule 26(f) conference. ECF No. 93. In light of that order,
25 which set a future date for a Rule 26(f) conference, Plaintiffs withdrew their discovery
26 propounded on Defendants Newsom and Bonta. Jonna Decl., ¶¶7-11 & Exs.8-9.

27 The CDE Defendants served responses to Plaintiffs’ written discovery on
28 March 11, 2024, and Plaintiffs sent a meet and confer letter on March 25. Plaintiffs also

1 extended the deadline for the EUSD Defendants to respond to Plaintiffs’ written
2 discovery to April 1, 2024. Jonna Decl., ¶¶12-13 & Exs.10-12. On March 20, 2024,
3 after Plaintiffs and Defendants Newsom and Bonta held their Rule 26(f) conference,
4 Plaintiffs re-propounded the prior discovery on them. Jonna Decl., ¶11.

5 LEGAL STANDARD

6 A party may seek a protective order that stays discovery pending resolution of a
7 potentially dispositive motion. *See, e.g., Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th
8 Cir. 2002). A motion for a protective order seeking to preclude discovery must be
9 supported by “good cause” and a “strong showing.” *See Blankenship v. Hearst Corp.*,
10 519 F.2d 418, 429 (9th Cir. 1975). Thus, a district court may enter a protective order
11 staying discovery, on a showing of good cause, when the district court “is *convinced*
12 that the plaintiff will be unable to state a claim for relief.” *Wood v. McEwen*, 644 F.2d
13 797, 801 (9th Cir. 1981) (per curiam) (emphasis added).

14 “The Ninth Circuit has not established a clear standard for deciding whether
15 to stay discovery when a potentially dispositive motion is pending.” *Rutledge v. ADP,*
16 *Inc.*, No. 22-cv-898, 2023 WL 2977343, at *2 (S.D. Cal. Apr. 17, 2023). But three
17 tests have been identified by various district courts. The first test has two elements:

18 First, the pending motion must be potentially dispositive of the entire case,
19 or at least dispositive on the issue at which discovery is aimed. Second, the
20 court must determine whether the pending, potentially dispositive motion
21 can be decided absent additional discovery. If either part of the test is not
22 met, discovery should proceed. This two-factor test requires the court to
take a “preliminary peek” at the merits of the pending, potentially
dispositive motion to determine whether a stay is granted.

23 *Id.* at *2 (cleaned up). Under the second test, “[o]ther courts in the Ninth Circuit
24 have applied a more lenient standard,” stating that stay can be granted if “there
25 appears to be an immediate and clear possibility that [the dispositive motion] will be
26 granted.” *Id.* at *2 (cleaned up). Finally, under the third test, “courts have analyzed
27 several factors on a case-by-case basis,” including the type of the challenge, “the
28 posture or stage of the litigation,” and “any other relevant circumstances.” *Id.* at *2.

ARGUMENT

Defendants Newsom and Bonta offer an amalgam of the three tests discussed above. From the first test, they state that the two issues are whether: “(1) is the pending motion potentially dispositive of the entire case, or at least dispositive on the issue at which discovery is aimed, and (2) can the pending, potentially dispositive motion be decided absent additional discovery.” ECF No. 103-1, at 5:1-4 (cleaned up). However, Defendants Newsom and Bonta also argue that they need only show “an immediate and clear possibility” that their motions will be granted, ECF No. 103-1 at 5:13-15—the “more lenient” standard from the second test. And lastly, from the third test, Defendants Newsom and Bonta argue that “a discovery stay would promote justice and efficiency.” ECF No. 103-1 at 7:16 (cleaned up). All three arguments fail.

I. JUDGE BENITEZ ALREADY MADE A PRELIMINARY PEEK WHEN HE ORDERED NEWSOM AND BONTA TO BE ADDED

As stated above, a district court may enter a protective order staying discovery, on a showing of good cause, when the district court “is *convinced* that the plaintiff will be unable to state a claim for relief.” *Wood*, 644 F.2d at 801 (emphasis added). This requires taking a “preliminary peek” at the pending motions to dismiss, *Rutledge*, 2023 WL 2977343, at *2, which “puts a magistrate judge in an awkward position,” since “[t]he district judge will decide the dispositive motion and may have a different view of the merits of the underlying motion.” *Id.* at *2 n.1 (citing *Mlejnecky v. Olympus Imaging Am., Inc.*, No. 2:10-cv-2630, 2011 WL 489743, at *8 (E.D. Cal. Feb. 7, 2011)).

Here, the Court need not and should not engage in the “awkward” analysis of whether Defendants Newsom’s and Bonta’s motions to dismiss will likely be granted. Rather, most relevant here is the fact that Plaintiffs did not ask to add them to the case—Judge Benitez *ordered* them to be added to the case in response to the CDE Defendants’ arguments. *See* ECF No. 72, Minute Order; *see also* ECF No. 75, Transcript at 45:15-16, 46:21-23 (Plaintiffs arguing that there was no need to add Newsom and Bonta, but Judge Benitez ordering it anyway). As explained in Plaintiffs’

1 opposition to Newsom’s and Bonta’s motion to dismiss, their motion is essentially a
2 motion for reconsideration of *both* Judge Benitez’s order to add them, and his prior
3 order rejecting legally identical arguments raised by the CDE Defendants in their
4 original motion to dismiss. *See* ECF No. 98 at 31. Until Judge Benitez rules on that
5 motion for reconsideration, his order requiring that Defendants Newsom and Bonta
6 be in this case, ECF No. 72, should be dispositive of the “preliminary peek” analysis.

7 In any event, as Plaintiffs explained in their opposition, although Defendants
8 Newsom and Bonta emphasize different arguments (Sovereign Immunity and
9 Standing, respectively), these are identical factual “causation” analyses. *See* ECF No.
10 98 at 22 (citing *Mecinas v. Hobbs*, 30 F.4th 890, 903 (9th Cir. 2022)). Attorney General
11 Bonta argues that his lawsuits against school districts are inadequately causal to
12 Plaintiffs’ injuries, *see* ECF Nos. 96 & 101, and Governor Newsom argues that his press
13 statements and behind the scenes maneuvering, are equally inadequately causal. *See*
14 ECF Nos. 95 & 100. But it was precisely because of those lawsuits that Judge Benitez
15 ordered Attorney General Bonta added to this case—so that he cannot “whipsaw the
16 school district.” *See* ECF No. 75 at 54:24-55:8. Further, in light of Judge Benitez’s
17 unequivocal order that he wants “everybody who can be responsible, if you will, and
18 who can be bound,” added to this case, ECF No. 75 at 55:2-4, Governor Newsom is
19 equally a proper defendant who could whipsaw the school district. *See Soos v. Cuomo*,
20 470 F. Supp. 3d 268, 282 (N.D.N.Y. 2020) (citing governor’s press statements as
21 evidence of government policy that would be implicitly followed by all subordinates
22 since he has ultimate authority); *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d
23 284, 298 (D.D.C. 2020) (same as to D.C. mayor).

24 II. DISCOVERY IS NOT NEEDED TO DECIDE THE MOTIONS

25 The second question is “whether the pending, potentially dispositive motion
26 can be decided absent additional discovery.” *Rutledge*, 2023 WL 2977343, at *2. As
27 the pending dispositive motion is not a summary judgment motion, Plaintiffs do not
28 contend that they need discovery to overcome the pending motions to dismiss.

1 III. OTHER FACTORS COUNSEL AGAINST A STAY

2 Lastly, Defendants Newsom and Bonta argue that a discovery stay is warranted
3 because of the burden of responding to the discovery, and because Plaintiffs allegedly
4 face no discernable prejudice. ECF No. 103-1 at 7:17-9:28. But the burden on
5 Plaintiffs is indeed severe. This case has been lingering for a full year—since April
6 2023—and Plaintiffs have suffered severe retaliation at work, ECF Nos. 5-3, 5-4, 8,
7 18-3 (plaintiff declarations), which ultimately required a contempt application when
8 EUSD was reticent to bring them back to work. ECF No. 59. Indeed, due to the
9 lingering nature of this very contentious case, Plaintiff Mirabelli has become severely
10 disabled with neuropathy. *See* ECF No. 59-2, ¶14. Plaintiffs want to bring this case to a
11 resolution so they can move on with their lives and their careers.

12 Further, Defendants Newsom and Bonta seek a discovery stay “as to them
13 only,” ECF No. 103-1 at 2:5, acknowledging that the other defendants are proceeding
14 with discovery. The other defendants served their initial disclosures in January 2024
15 and are already responding to Plaintiffs’ first set of written discovery. Jonna Decl.,
16 ¶¶5, 12. The *identical* discovery was propounded on *all* state-level defendants (for a
17 reason), including Defendants Newsom and Bonta. Plaintiffs are now meeting and
18 conferring with the CDE Defendants over their responses to those discovery
19 requests. Jonna Decl., ¶13 & Ex.12. From the perspective of expense and efficiency, it
20 would make most sense to include Defendants Newsom and Bonta in that discussion,
21 but Plaintiffs extended the deadline for them to respond to that discovery (via
22 withdrawing and then re-propounding it), out of courtesy.

23 Instead of promoting efficiency across-the-board, Defendants Newsom and
24 Bonta seek to impose burdens solely on Plaintiffs without a realistic likelihood that
25 their motions to dismiss will be granted. This case has been pending for long
26 enough—the Court should deny their application for a stay.

27 CONCLUSION

28 The application for a discovery stay should be denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: April 1, 2024

By:



Charles S. LiMandri
Paul M. Jonna
Mark D. Myers
Jeffrey M. Trissell
Milan L. Brandon II
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Elizabeth Mirabelli v. Mark Olson, President of the EUSD Board of Education, et al.

USDC Court Case No.: 3:23-cv-00768-BEN-WVG

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; my business address is P.O. Box 9120, Rancho Santa Fe, California 92067, and that I served the following document(s):

- **Plaintiffs’ Opposition to Defendants Newsom’s and Bonta’s Ex Parte Application for a Protective Order Staying Discovery Pending Ruling on their Motions to Dismiss; and**
- **Declaration of Paul M. Jonna, Esq., in Support of Plaintiffs’ Opposition to Defendants Newsom’s and Bonta’s Ex Parte Application for a Protective Order Staying Discovery Pending Ruling on their Motions to Dismiss.**

on the interested parties in this action by placing a true copy in a sealed envelope, addressed as follows:

Len Garfinkel, Esq., General Counsel
 Bruce Yonehiro, Assistant General Counsel
 Paul Gant, Assistant General Counsel
 Christopher Mandarano, Esq., Deputy Gen. Counsel
 Virginia Cale, Deputy General Counsel
 California Department of Education
 1430 “N” Street, Suite 5319
 Sacramento, CA 95814
 Tel: 916-319-0860; Fax: 916-322-2549
 E-Mail: lgarfinkel@cde.ca.gov
 E-Mail: byonehiro@cde.ca.gov
 E-Mail: pgant@cde.ca.gov
 E-Mail: cmandarano@cde.ca.gov
 E-Mail: vcale@cde.ca.gov
Attorneys for State Defendants

Daniel R. Shinoff, Esq.
 Gil Abed, Esq.
 Jack Sleeth, Esq.
 Maurice Bumbu, Esq.
 Artiano Shinoff
 3636 Fourth Avenue, Suite 200
 San Diego, CA 92103
 Tel: 619-232-3122
 E-Mail: Dshinoff@as7law.com
 E-Mail: nlay@as7law.com
 E-Mail: gabed@as7law.com
 E-Mail: jsleeth@as7law.com
 E-Mail: mbumbu@as7law.com
Attorneys for EUSD Defendants

Emmanuelle Soichet, Esq.
 Darrell W. Spence, Esq.
 Kevin L. Quade, Esq.
 Deputy Attorney General
 California Department of Justice
 455 Golden Gate Ave., Ste. 1100
 San Francisco, CA 94102-7004
 E-Mail: emmanuelle.soichet@doj.ca.gov
 E-Mail: darrell.spence@doj.ca.gov
 E-Mail: kevin.quade@doj.ca.gov
**Attorneys for Governor Gavin Newsom
 and Attorney General Ron Bonta**

X **(BY ELECTRONIC MAIL)** I served a true copy, electronically on designated recipients via electronic transmission of said documents.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed on April 1, 2024, at Rancho Santa Fe, California.


 Kathy Denworth

1 Charles S. LiMandri, SBN 110841
 2 cslimandri@limandri.com
 3 Paul M. Jonna, SBN 265389
 4 pjonna@limandri.com
 5 Mark D. Myers, SBN 235719
 6 mmyers@limandri.com
 7 Jeffrey M. Trissell, SBN 292480
 8 jtrissell@limandri.com
 9 Milan L. Brandon II, SBN 326953
 10 mbrandon@limandri.com
 11 LiMANDRI & JONNA LLP
 12 P.O. Box 9120
 13 Rancho Santa Fe, CA 92067
 14 Telephone: (858) 759-9930
 15 Facsimile: (858) 759-9938

Thomas Brejcha, *pro hac vice**
 tbrejcha@thomasmoresociety.org
 Peter Breen, *pro hac vice**
 pbreen@thomasmorsociety.org
 THOMAS MORE SOCIETY
 309 W. Washington St., Ste. 1250
 Chicago, IL 60606
 Tel: (312) 782-1680
 *Application forthcoming

Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an
 16 individual, and LORI ANN WEST, an
 17 individual,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity as
 21 President of the EUSD Board of
 22 Education, et al.,

23 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**Declaration of Paul M. Jonna, Esq., in
 Support of Plaintiffs’ Opposition to
 Defendants Newsom’s and Bonta’s
 Ex Parte Application for a Protective
 Order Staying Discovery Pending
 Ruling on their Motions to Dismiss**

Mag. Judge: Hon. Valerie E. Torres
 Courtroom: 14B

Action Filed: April 27, 2024

1 I, Paul M. Jonna, Esq., declare and state as follows:

2 1. I am an attorney at law duly licensed to practice in the State of California
3 and in the Southern District of California. I am a Partner with LiMandri & Jonna
4 LLP, and am counsel of record for Plaintiffs Elizabeth Mirabelli and Lori Ann West.
5 The matters discussed below are based on my own personal knowledge. I could and
6 would testify to them if called upon to do so in court.

7 2. On January 29, 2024, my office filed Plaintiffs' First Amended Complaint
8 in this action, naming Governor Gavin Newsom and Attorney General Rob Bonta as
9 defendants. The next day, January 30, 2024, my office emailed three Deputy
10 Attorneys General with whom we had previously litigated cases to ask that they help
11 identify the DAG with whom we'd be working on this case, and ask that they waive
12 personal service of the Complaint.

13 3. The next day, January 31, 2024, my office received a call from Deputy
14 Attorney General Emmanuelle Soichet. Mr. Jeffrey Trissell took the call. DAG Soichet
15 requested an extension of time for Governor Newsom and AG Bonta to file their
16 anticipated motions to dismiss. The day after that, February 1, 2024, DAG Soichet
17 sent an email with the same request.

18 4. My office responded with a letter dated February 1, 2024, a true and
19 correct copy of which is attached as **Exhibit 1**. As we explained, we could not agree
20 to any extensions in light of the lengthy delays in this case, and we could not see any
21 possible justification for a motion to dismiss. Thus, we explained that we would
22 request sanctions if the Attorney General's office filed a motion to dismiss. We also
23 explained that, because the AG would not agree to waive personal service without an
24 extension of time to file the motions to dismiss, we would be personally serving the
25 complaint.

26 5. We also advised the AG's office that their initial disclosures were due 30
27 days after service of the First Amended Complaint—or March 4, 2024. We did this
28 because the original defendants' initial disclosures had been due on January 22, 2024,

1 but they served them late, and only in response to an email from our office. In
2 response to that email, the State Education Defendants and EUSD Defendants
3 served their initial disclosures on January 23, 2024. Attached as **Exhibits 2 and 3** are
4 true and correct copies of the emails exchanged between my office and the
5 defendants requesting information about their tardy initial disclosures.

6 6. On February 9, 2024, after Defendants Newsom and Bonta were
7 properly served with the First Amended Complaint, my office propounded a
8 comprehensive set of written discovery on all of the state-level defendants. We
9 propounded the identical discovery on Governor Gavin Newsom, Attorney General
10 Rob Bonta, State Superintendent Tony Thurmond, and the 11 members of the State
11 Board of Education. A true and correct copy of our first set of interrogatories,
12 document requests, and two sets of requests for admission, propounded on the state-
13 level defendants, is attached as **Exhibits 4, 5, 6, and 7**.

14 7. On February 14, 2024, DAG Kevin Quade emailed my office, requesting
15 a time to meet and confer about various issues, including whether my office would
16 stipulate to a stay of discovery as to the Governor and Attorney General pending
17 their forthcoming motions to dismiss. We scheduled that meet and confer for the
18 next day, February 15, at 12:30 p.m. In advance of that call, DAG Quade explained in
19 an email that circumstances unique to his clients made a duplicative Rule 12(b)(1)
20 motion for lack of standing appropriate. I twice wrote asking him to explain what
21 those circumstances were, but he refused to explain them. A true and correct copy of
22 the parties' email chain, dated February 14, 2024, is attached as **Exhibit 8**.

23 8. On the call, DAG Quade reiterated that circumstances unique to his
24 clients made a duplicative Rule 12(b)(1) motion for lack of standing appropriate, but
25 still refused to provide any specifics as to what those circumstances were. I explained
26 that I did not see how any such motion could be appropriate in light of the Court's
27 prior ruling on the motions to dismiss and preliminary injunction, as well as the order
28 requiring the addition of the two new defendants, but he had no response.

1 9. On February 20, Defendants Newsom and Bonta filed a motion to
2 continue the ENE and CMC to after their forthcoming motions to dismiss were denied
3 and they Answered. This Court granted that motion in part, and denied it in part,
4 continuing the ENE and CMC from February 28 to April 12, continuing the deadline
5 for them to serve initial disclosures from March 4 to April 5, and setting a March 22
6 deadline for a Rule 26(f) conference.

7 10. In light of that order, which set a future date for a Rule 26(f) conference,
8 DAG Quade emailed my office on February 22, 2024, to reopen discussions about
9 discovery. In that email, DAG Quade stated his position that a stipulated discovery
10 stay was no longer needed. Rather, by the Court setting a future deadline to hold a Rule
11 26(f) conference, DAG Quade wrote that our discovery was premature until the
12 parties held that conference. I responded that we disagreed, but that we could toll the
13 deadline for Defendants Newsom and Bonta to respond to the discovery until 30 days
14 after the parties held their Rule 26(f) conference. DAG Quade insisted that Plaintiffs
15 withdraw the discovery (instead of toll it), which my office agreed to do.

16 11. In line with this Court's order to hold a Rule 26(f) conference no later
17 than March 22, the parties scheduled a Rule 26(f) conference for March 20. But at that
18 conference, counsel for Defendants Newsom and Bonta reiterated their argument that
19 all discovery discussions were premature, and thus offered nothing substantive other
20 than a request that Plaintiffs' draft Joint Discovery Plan extend the proposed schedule.
21 After that deficient conference on March 20, 2024, we re-propounded our prior
22 discovery. A true and correct copy of this email chain between counsel is attached as
23 **Exhibit 9**. A true and correct copy of the re-propounded discovery is attached to DAG
24 Soichet's declaration.

25 12. On March 11, 2024, State Superintendent Tony Thurmond and the 11
26 members of the State Board of Education served their responses to that same written
27 discovery. As illustration, attached as **Exhibit 10** is State Superintendent Tony
28 Thurmond's responses to Plaintiffs' interrogatories, and attached as **Exhibit 11** is the

1 State Board members responses to Plaintiffs’ interrogatories. In response to the EUSD
2 Defendants’ request, my office extended the deadline for them to respond to Plaintiffs’
3 the first set of written discovery to April 1, 2024.

4 13. On March 25, 2024, my office sent a meet and confer letter to counsel for
5 the State Education Defendants requesting further, clarified, or amended responses to
6 their responses to the first set of written discovery, a true and correct copy of which is
7 attached as **Exhibit 12**.

8 I declare under penalty of perjury under the laws of the United States and the
9 State of California that the foregoing is true and correct.

10 Executed on April 1, 2024, in Rancho Santa Fe, California.

11
12 
13 Paul M. Jonna, Esq.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



LIMANDRI & JONNA LLP

CHARLES S. LIMANDRI**
PAUL M. JONNA*

MARK D. MYERS
JEFFREY M. TRISSELL†
JOSHUA A. YOUNGKIN
ROBERT E. WEISENBURGER
MILAN L. BRANDON II
JOHANNA DELEISSEGUES

BRIAN D. MILLER
MICHAEL J. ALTI
RICHARD SALPIETRA

Of Counsel

*BOARD CERTIFIED CIVIL TRIAL ADVOCATE
ADMITTED TO THE DISTRICT OF COLUMBIA BAR
ADMITTED TO THE NEW YORK BAR
†ADMITTED TO THE U.S. SUPREME COURT

MAILING ADDRESS:

POST OFFICE BOX 9120
RANCHO SANTA FE, CALIFORNIA 92067
TELEPHONE: (858) 759-9930
FACSIMILE: (858) 759-9938

WEBSITE: www.limandri.com

PHYSICAL ADDRESS:

16236 SAN DIEGUITO ROAD
BUILDING 3, SUITE 3-15
RANCHO SANTA FE, CA 92091

KATHY DENWORTH
Office Administrator

February 1, 2024

VIA EMAIL ONLY:

emmanuelle.soichet@doj.ca.gov

Emmanuelle Soichet, Esq.
Deputy Attorney General
California Department of Justice
455 Golden Gate Ave., Ste. 1100
San Francisco, CA 94102-7004

Re: *Mirabelli & West v. Olson*, No. 3:23-cv-0768-BEN (S.D. Cal. Apr. 27, 2023)

Dear Ms. Soichet:

This letter is sent in response to your call of January 31, 2024, and email of February 1, 2024. As Mr. Trissell indicated, we generally try to exchange professional courtesies. As he explained, our main concern here is the delay that has been caused by prior unnecessary motion practice. At this stage, we intend to promptly proceed with discovery and then summary judgment; additional unnecessary delay will prejudice our clients. Mr. Trissell did not agree to any extensions or a negotiated briefing schedule, making clear that all decisions have to be made by our team together.

If you study the docket, you'll see that we filed this case on April 27, 2023, ECF No. 1, and very shortly thereafter filed a motion for a preliminary injunction set for hearing on June 26, 2023. ECF No. 5. Our original hope was to get an injunction over the summer so that we could get our clients back in the classroom for the entirety of the 2023-2024 school year. However, shortly after we filed, Judge Benitez *sua sponte* continued the hearing four weeks to July 17, 2023. ECF No. 22.

Emmanuelle Soichet, Esq.

Re: *Mirabelli v. Olson*, No. 3:23-cv-0768-BEN (S.D. Cal. Apr. 27, 2023)

February 1, 2024

Page 2

After we served the Complaint, the Escondido Union School District defendants (“EUSD”) quickly responded with a Rule 12(b)(6) motion to dismiss, set for hearing on the same day as our preliminary injunction motion. We welcomed this so that the case could quickly become at issue. *See* ECF No. 7. But the California Department of Education defendants (“CDE”) waited the full 60 days, until June 27, 2023, to file their motion to dismiss—which raised only standing issues. ECF No. 25. That caused Judge Benitez to continue the hearing again, consolidating all three motions for hearing on August 21, 2023. ECF No. 27. The hearing was then continued twice more, until it finally occurred on August 30, 2023. *See* ECF Nos. 29, 35.

Once we finally got our preliminary injunction issued on September 14, 2023, and the two motions to dismiss were denied, *see* ECF No. 42, EUSD continued to refuse to bring our clients back into the classroom—keeping them on paid administrative leave. So we were forced to twice extend the responsive pleading deadline as we considered adding additional claims against EUSD. *See* ECF Nos. 43, 44, 48, 49. For both motions, the Court simply signed our proposed orders, but for the second one, added that “[n]o further extensions will be granted by the Court.” ECF No. 49.

EUSD and the CDE thus only answered on November 13, 2023, ECF Nos. 51, 52, and we only got Plaintiff West back in the classroom in January of this year, after filing a contempt application. *See* ECF Nos. 59, 60, 73. Because of unnecessary delay, Plaintiff West missed over half of the year, and is now on a substitute teacher rotation because her class is being taught by someone else—because she was not there at the beginning of the year. Plaintiff Mirabelli has been repeatedly hospitalized with stress-induced neuropathy relating to severe anxiety resulting from the defendants’ aggressive push-back and delay tactics.

After they answered, the CDE immediately filed a Rule 12(c) motion for judgment on the pleadings. *See* ECF No. 53. Judge Benitez took that motion under submission and has not yet ruled, but at the hearing, he *sua sponte* ordered Plaintiffs to file a First Amended Complaint naming Attorney General Bonta and Governor Newsom as defendants. *See* ECF No. 72. At the hearing, the CDE requested longer than 14 days to file their amended answer. Like before, Judge Benitez said that there would be no extensions. *See* ECF No. 75 at p.55.

Getting to this point has been extremely difficult for plaintiffs, for many practical reasons, and so we have grown weary of needless delay. Thus, as Mr. Trissell explained on the phone, when we saw the CDE’s Rule 12(c) motion for judgment on the pleadings, we felt we had to request sanctions. Our basis for sanctions is briefed in ECF No. 62, so we direct you to it. Primarily, under 28 U.S.C. § 1927, the court can sanction any attorney “who so multiplies the proceedings in any case unreasonably and vexatiously.” This does not require finding an intent to harass, but merely recklessly raising a frivolous argument. And a motion is frivolous when it merely “rehash[es] legal arguments already rejected by the district court.” *Hyde & Drath v. Baker*, 24 F.3d 1162, 1172 (9th Cir. 1994).

Emmanuelle Soichet, Esq.

Re: *Mirabelli v. Olson*, No. 3:23-cv-0768-BEN (S.D. Cal. Apr. 27, 2023)

February 1, 2024

Page 3

I will also note that the provision in the Local Rules regarding applications for reconsideration is not limited to a party re-raising an argument *he* has already made. Rather, whenever a motion has been made by *any* party, and decided by the court, *any* party who re-raises similar issues must explain why reconsideration is appropriate. *See* S.D. Cal. CivLR 7.1(i).

In your email, you “proposed to accept service by email on behalf of the Governor and Attorney General with the understanding that the Attorney General and plaintiffs will file a joint stipulation with the court for the following: an extension of up to 30 days on the Attorney General’s responsive pleading,” in addition to the standard 21 days. Fed. R. Civ. P. 12(a)(1)(A)(i). *See* Email from Soichet to Trissell (Feb. 1, 2024, 7:01 a.m.). Then, you stated, “given your concerns, my clients would alternatively be willing to accept by email and sign a waiver of service form that will afford the Governor and Attorney General 60 days from today to file their responsive pleadings.” *Id.* However, it is unclear to us how permitting the Attorney General 60-days to file a responsive pleading, instead of 51-days, addresses our concerns about delay.

Your email also proposes a negotiated briefing schedule where Plaintiffs’ opposition to the Attorney General’s motion to dismiss would be due 30 days after filing, and the Attorney General’s reply would be due 21 days after the opposition. Under the Local Rules, regardless of when a motion is filed, a reply is due 7 days prior to the noticed hearing and the opposition is due 14 days prior. *See* S.D. Cal. CivLR 7.1(e).

In light of the above, and upon further consideration of the issues, we cannot agree to your proposed schedule. Under the above schedule, the Complaint would be deemed served today, February 1, 2024, and the Attorney General would then have 60 days to file a Rule 12(b)(6) motion to dismiss—until April 1, 2024. Our opposition would be due on May 1, 2024, your reply would be due on May 22, 2024, and a hearing would be set for some time thereafter in June. Instead, we will be personally serving the Complaint tomorrow, giving you until February 23, 2024 to file a responsive pleading. Because of Judge Benitez’s repeated denials of further extensions of the time to file answers, we cannot agree to a further extension.

With respect to your responsive pleading, we respectfully urge you to file an answer instead of a motion to dismiss. Judge Benitez’s order denying the prior two motions to dismiss is quite comprehensive. *See* ECF No. 42. In it, he denied the CDE’s arguments that they were not proper defendants because of their distance from the facts here, and he rejected EUSD’s arguments that Plaintiffs had failed to properly state their claims.

In light of Judge Benitez’s rejection of the CDE’s arguments on standing, and his express order to add Governor Newsom and Attorney General Bonta as defendants, it seems odd to us that you could raise an argument that your clients should not be in this case because they are “differently situated” than the current defendants. *See* Email from Soichet to Trissell (Feb. 1, 2024,

Emmanuelle Soichet, Esq.

Re: *Mirabelli v. Olson*, No. 3:23-cv-0768-BEN (S.D. Cal. Apr. 27, 2023)

February 1, 2024

Page 4

7:01 a.m.). However, we would be interested in meeting and conferring with you over whatever those arguments are.

Separate from that, it would seem that a motion to dismiss would simply be targeted at whether Plaintiffs have adequately pleaded their claims. But we do not see how any such motion could be successful, in light of the prior briefing and argument. Perhaps most importantly, the motion to dismiss order states that “the reasons proffered by the defendants for the policy pass neither the strict scrutiny nor the rational basis tests.” ECF No. 42 at p.27:11-12. That should be dispositive.

The order also explains at length how the policies at issue violate the Fourteenth Amendment rights of parents to direct the upbringing of their children, *id.* at pp.14-18, and how children’s privacy rights are not violated. *Id.* 42 at p.19 (“[A] student who announces the desire to be publicly known in school by a new name, gender, or pronoun and is referred to by teachers and students and others by said new name, gender, or pronoun, can hardly be said to have a reasonable expectation of privacy or expect non-disclosure.”); p.20 (“California appellate courts recognize that parents have constitutional rights and legal responsibilities and that generally a parent’s rights are superior to a right of privacy belonging to their child.”).

On the Free Exercise claims, the Court held that Plaintiffs’ religious beliefs were sincere, *id.* at p.23, and burdened. *Id.* at p.24. And the Court held that the discretionary exemptions inherent to the policies triggered strict scrutiny: “There are no standards written in the policy for determining what is a ‘legitimate need[,]’ only that it requires a case by case decision.... This is the very definition of a discretionary exemption.” *Id.* at pp.26-27 (brackets in original).

On Plaintiffs’ Free Speech claim, the Court held that the “teachers could also make out a freedom of speech claim if the policy compels them to violate the law or deliberately convey an illegal message. Here, ... the policy of AR 5145.3, as presented to the faculty, and EUSD’s response to the plaintiffs’ request for accommodations, appears to demand that these teachers communicate misrepresentations to parents about the names and pronouns adopted by their students. As discussed above, that would likely be unlawful and in derogation of the constitutional rights of parents.” *Id.* at p.23 (italics omitted).

Thus, we do not think any motion to dismiss targeted to the adequacy of the pleadings would be meritorious, and would instead be a waste of both the parties’ and the Court’s resources. To avoid unnecessary briefing, we would invite you to provide us with your anticipated arguments in advance, so that we can meet and confer over them. As we explained to the CDE the last time around, if you intend to actually raise new issues, unique to your clients, then that is perfectly appropriate. But rehashing arguments that have already been soundly rejected will be a waste of time, forcing us to request sanctions.

Emmanuelle Soichet, Esq.

Re: *Mirabelli v. Olson*, No. 3:23-cv-0768-BEN (S.D. Cal. Apr. 27, 2023)

February 1, 2024

Page 5

Please also note that your initial disclosures will be due 30 days after service of the Complaint. Fed. R. Civ. P. 26(a)(1)(D). I note this because, as another one of the many instances of delay in this case, both EUSD and the CDE served their initial disclosures late, after we inquired as to why they had not been served. Further, in advance of the ENE on February 28, 2024, the parties agreed at the Rule 26(f) conference that Plaintiffs would circulate a draft Joint Discovery Plan on February 9, 2024, which we will send to you as well.

Respectfully submitted,

LiMANDRI & JONNA LLP



Paul M. Jonna

PMJ/jmt

cc: Daniel R. Shinoff, Esq., dshinoff@as7law.com

Jack M. Sleeth, Esq., jsleeth@as7law.com

Gil Abed, Esq., gabed@as7law.com

Maurice A. Bumbu, Esq., mbumbu@as7law.com

Nopealey Lay, nlay@as7law.com

Len Garfinkel, Esq., lgarfinkel@cde.ca.gov

Christopher N. Mandarano, Esq., cmandarano@cde.ca.gov

Virginia G. Cale, Esq., vcale@cde.ca.gov

Darrell W. Spence, Esq., darrell.spence@doj.ca.gov

Kevin L. Quade, Esq., kevin.quade@doj.ca.gov

EXHIBIT 2

From: [Nopealey Lay](#)
To: [Charles Limandri](#); [Paul Jonna](#); [Mark Myers](#); [Jeffrey Trissell](#); [Milan Brandon](#); [Kathy Denworth](#); [Rebecca Oakley](#); cmandarano@cde.ca.gov; rfeil@cde.ca.gov
Cc: [Daniel Shinoff](#); [Jack Sleeth](#)
Subject: Mirabelli v. EUSD: Initial Disclosures Per Rule 26(A)(1)
Date: Tuesday, January 23, 2024 3:15:08 PM
Attachments: [image001.png](#)
[Defendant School Employees" Initial Disclosures Per Rule 26\(A\)\(1\) \(S0569653\).PDF](#)
[1.23.24 POS re Rule 26 \(S0569654\).PDF](#)

Dear Counsel,

Attached please find the following documents:

1. DEFENDANT SCHOOL EMPLOYEES' INITIAL DISCLOSURES PER RULE 26(A)(1)
2. Proof of Service

Sincerely,
Nopealey Lay



Legal Secretary to

Daniel R. Shinoff, Esq.

Jack M. Sleeth Jr, Esq.

Ernest Wright, Esq.

ARTIANO SHINOFF

3636 Fourth Avenue, Suite 200

San Diego, CA 92103

Business: (619) 232-3122 Ext. 483

Direct: (858) 201-4079

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

 *Please consider the environment before printing this e-mail.*

From: [Jack Sleeth](#)
To: [Jeffrey Trissell](#); [Rebecca Oakley](#); lgarfinkel@cde.ca.gov; cmandarano@cde.ca.gov; [Daniel Shinoff](#); [Nopealey Lay](#); [Gil Abed](#); [Maurice Bumbu](#)
Cc: [Charles Limandri](#); [Paul Jonna](#); [Kathy Denworth](#)
Subject: RE: Mirabelli et al. v. Olson et al., USDC District of Southern California Case No.: 3:23-cv-0768-BEN-VET
Date: Tuesday, January 23, 2024 12:07:41 PM

I have no excuse. I forgot to do it, and was working on other matters. I am putting it together now.

Jack

From: Jeffrey Trissell <jtrissell@limandri.com>
Sent: Tuesday, January 23, 2024 11:59 AM
To: Rebecca Oakley <roakley@limandri.com>; lgarfinkel@cde.ca.gov; cmandarano@cde.ca.gov; Daniel Shinoff <DShinoff@as7law.com>; Nopealey Lay <nlay@AS7Law.com>; Gil Abed <GAbed@as7law.com>; Jack Sleeth <JSleeth@as7law.com>; Maurice Bumbu <mbumbu@as7law.com>
Cc: Charles Limandri <climandri@limandri.com>; Paul Jonna <pjonna@limandri.com>; Kathy Denworth <kdenworth@limandri.com>
Subject: RE: Mirabelli et al. v. Olson et al., USDC District of Southern California Case No.: 3:23-cv-0768-BEN-VET

Counsel,

Per the Court's scheduling orders, the parties' initial disclosures were due yesterday. If you mailed them, I would request that you also send us a courtesy electronic copy. If for some reason you do not believe they were due yesterday, please let us know why.

Thank you,
Jeff

Jeffrey M. Trissell | Senior Associate
LiMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Fax: (858) 759-9938
jtrissell@limandri.com | www.limandri.com

This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. If you receive this communication, and it contains serious allegations against you or a person(s) you represent which you do not repudiate, the failure to repudiate will constitute an admission of the allegations. Thank you.

From: Rebecca Oakley <roakley@limandri.com>
Sent: Monday, January 22, 2024 4:35 PM
To: lgarfinkel@cde.ca.gov; cmandarano@cde.ca.gov; Dshinoff@as7law.com; nlay@as7law.com; gabed@as7law.com; jsleeth@as7law.com; mbumbu@as7law.com
Cc: Charles Limandri <climandri@limandri.com>; Paul Jonna <pjonna@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Kathy Denworth <kdenworth@limandri.com>
Subject: Mirabelli et al. v. Olson et al., USDC District of Southern California Case No.: 3:23-cv-0768-BEN-VET

Dear Counsel:

Attached for service please find Plaintiffs' Initial Disclosures Per Rule 26(a)(1). Plaintiffs' initial document production is available at the below link.

<https://drive.google.com/file/d/19EswvapsUyCZBUzJdUb9Ox5vowvUdwj4/view?usp=sharing>

Best regards,

Rebecca M. Oakley | Paralegal

LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067

Tel: (858) 759-9930 | Fax: (858) 759-9938

roakley@limandri.com | www.limandri.com

This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

EXHIBIT 3

From: [Elisa Ramirez](#)
To: [Charles Limandri](#); [Paul Jonna](#); [Mark Myers](#); [Jeffrey Trissell](#); [Milan Brandon](#); tbreicha@thomasmoresociety.org; pbreen@thomasmorsociety.org; dshinoff@as7law.com; nlay@AS7Law.com; gabed@as7law.com; jsleeth@as7law.com; mbumbu@as7law.com
Cc: [Len Garfinkel](#); [Christopher Mandarano](#); [Virginia Cale](#); [Bruce Yonehiro](#)
Subject: Mirabelli v. EUSD: Initial Disclosures Per Rule 26(A)(1)
Date: Tuesday, January 23, 2024 3:42:03 PM
Attachments: [240123 Initial Disclosures.pdf](#)
[POS Inital Disclosure - Federal.pdf](#)

Good afternoon:

Attached for service please find Defendants' CDE and SBE Initial Disclosures Per Rule 26(a)(1). CDE/SBE inadvertently missed that the January 22 date for submission of initial disclosures still applied after the court issued an order changing some previously set dates. Thank you.

Elisa Ramirez, Legal Secretary
Administrative Support and Regulations Adoption
Legal, Audits, & Charters Branch
California Department of Education
1430 N Street, Suite 5319
Sacramento, CA 95814-5901
Phone: 916-319-0860
Fax: 916-322-2549

This communication with its contents may contain confidential and or legally privileged information. It is solely for the use of the intended recipient(s). If you are not the intended recipient, or an employee, or agent responsible for delivering this message to the intended recipient, you are advised that any disclosure, publication, copying, or the taking of any action in reliance upon this communication is prohibited. If you have received this communication in error, please notify the sender immediately by reply email and destroy and or delete all copies of this communication. Thank you.

From: [Jeffrey Trissell](#)
To: [Rebecca Oakley](#); lgarfinkel@cde.ca.gov; cmandarano@cde.ca.gov; Dshinoff@as7law.com; nlay@as7law.com; gabed@as7law.com; jsleeth@as7law.com; mbumbu@as7law.com
Cc: [Charles Limandri](#); [Paul Jonna](#); [Kathy Denworth](#)
Subject: RE: Mirabelli et al. v. Olson et al., USDC District of Southern California Case No.: 3:23-cv-0768-BEN-VET
Date: Tuesday, January 23, 2024 11:58:00 AM

Counsel,

Per the Court's scheduling orders, the parties' initial disclosures were due yesterday. If you mailed them, I would request that you also send us a courtesy electronic copy. If for some reason you do not believe they were due yesterday, please let us know why.

Thank you,
Jeff

Jeffrey M. Trissell | Senior Associate
LiMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Fax: (858) 759-9938
jtrissell@limandri.com | www.limandri.com

This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. If you receive this communication, and it contains serious allegations against you or a person(s) you represent which you do not repudiate, the failure to repudiate will constitute an admission of the allegations. Thank you.

From: Rebecca Oakley <roakley@limandri.com>
Sent: Monday, January 22, 2024 4:35 PM
To: lgarfinkel@cde.ca.gov; cmandarano@cde.ca.gov; Dshinoff@as7law.com; nlay@as7law.com; gabed@as7law.com; jsleeth@as7law.com; mbumbu@as7law.com
Cc: Charles Limandri <climandri@limandri.com>; Paul Jonna <pjonna@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Kathy Denworth <kdenworth@limandri.com>
Subject: Mirabelli et al. v. Olson et al., USDC District of Southern California Case No.: 3:23-cv-0768-BEN-VET

Dear Counsel:

Attached for service please find Plaintiffs' Initial Disclosures Per Rule 26(a)(1). Plaintiffs' initial document production is available at the below link.

<https://drive.google.com/file/d/19EswvapsUyCZBUzJdUb9Ox5vowvUdwj4/view?usp=sharing>

Best regards,

Rebecca M. Oakley | Paralegal

LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067

Tel: (858) 759-9930 | Fax: (858) 759-9938

roakley@limandri.com | www.limandri.com

This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

EXHIBIT 4

1 Charles S. LiMandri, SBN 110841
2 cslimandri@limandri.com
3 Paul M. Jonna, SBN 265389
4 pjonna@limandri.com
5 Mark D. Myers, SBN 235719
6 mmyers@limandri.com
7 Jeffrey M. Trissell, SBN 292480
8 jtrissell@limandri.com
9 Milan L. Brandon II, SBN 326953
10 mbrandon@limandri.com
11 LiMANDRI & JONNA LLP
12 P.O. Box 9120
13 Rancho Santa Fe, CA 92067
14 Telephone: (858) 759-9930
15 Facsimile: (858) 759-9938

Thomas Brejcha, *pro hac vice**
tbrejcha@thomasmoresociety.org
Peter Breen, *pro hac vice**
pbreen@thomasmorsociety.org
THOMAS MORE SOCIETY
309 W. Washington St., Ste. 1250
Chicago, IL 60606
Tel: (312) 782-1680
*Application forthcoming

Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an
16 individual, and LORI ANN WEST, an
17 individual,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity as
21 President of the EUSD Board of
22 Education, et al.,

23 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**PLAINTIFF MIRABELLI'S
INTERROGATORIES TO THE
STATE DEFENDANTS**

[SET ONE]

Judge: Hon. Roger T. Benitez

Courtroom: 5A

Action Filed: April 27, 2023

Trial Date: Not Set

1 PROPOUNDING PARTIES: Elizabeth Mirabelli.

2 RESPONDING PARTIES: Governor Gavin Newsom, Attorney General
3 Rob Bonta, State Superintendent Tony Thurmond, California State Board President
4 Darling-Hammond, State Board Vice President Cynthia Glover Woods, State Board
5 Member Francisco Escobedo, State Board Member Brenda Lewis, State Board
6 Member James J. McQuillen, State Board Member Sharon Olken, State Board
7 Member Gabriela Orozco-Gonzalez, State Board Member Kim Pattillo Brownson,
8 State Board Member Haydee Rodriguez, State Board Member Alison Yoshimoto-
9 Towery, State Board Member Anya Ayyappan (collectively, “State Defendants”).

10 SET NO.: One [1-17].

11

12 Pursuant to Fed. R. Civ. P. 33, Plaintiff Elizabeth Mirabelli hereby requests
13 that the State Defendants respond in writing to the following interrogatories.
14 Pursuant to Rule 33(b)(2), written responses to these requests are due by **Monday,**
15 **March 11, 2024.** Pursuant to Rule 33(b)(3), (5), the responses must be verified under
16 oath at that time. The responding party may deliver their original responses to
17 LiMandri & Jonna, LLP, located at 16236 San Dieguito Road, Suite 3-15, Rancho
18 Santa Fe, California 92067 (physical address). Alternatively, responding party may
19 mail its original responses to P.O. Box 9120, Rancho Santa Fe, CA 92067 (mailing
20 address).

21

DEFINITIONS

22 1. “YOU” and “YOUR” means the party responding to these requests,
23 and includes any predecessors, successors, partners, subsidiaries, affiliates, partners,
24 joint venturers, officers, directors, agents, employees, insurance company(s),
25 attorneys, accountants, adjusters, contractors, consultants, underwriters,
26 investigators, claims handlers, or other person(s) acting at that party’s behest or on
27 that party’s behalf or who is otherwise within its control or obligated to respond to
28 these requests for production.

1 2. “PERSON” means a natural person, firm, association, organizations,
2 partnership, business, trust, corporation or public entity.

3 3. The term “DOCUMENTS” as used in these Requests for Production is
4 intended to be defined as in Fed. R. Civ. P. 34 and includes any printed, handwritten,
5 recorded, electronically stored or graphic matter of every type and description,
6 however and by whomever made, reproduced or disseminated, in your actual or
7 constructive custody or control. This includes electronically stored information (ESI)
8 as that term is defined in Fed. R. Civ. P. 34. ESI may be generated or stored in several
9 locations, including emails and email attachments, Excel spreadsheets, word
10 processing documents, databases, voicemails, text messages, internet history logs,
11 backup tapes, social media platforms, devices connected to the Internet of Things
12 (IoT), workplace collaboration tools (WCTs), and ephemeral messaging applications.

13 4. “COMMUNICATION” or “COMMUNICATIONS” means the
14 transmittal of information (in the form of facts, ideas, inquiries, or otherwise)
15 whether orally, in writing, or otherwise.

16 5. “PLAINTIFFS” means Plaintiff Elizabeth Mirabelli and Plaintiff Lori
17 Ann West.

18 6. “COMPLAINT” means the complaint filed in this case.

19 7. “ANSWER” means the answer filed in this case.

20 8. “2016 LEGAL ADVISORY ON GENDER IDENTITY” means the
21 webpage “Legal Advisory regarding application of California’s antidiscrimination
22 statutes to transgender youth in schools” available online at
23 <https://www.cde.ca.gov/re/di/eo/legaladvisory.asp>.

24 9. “FAQ PAGE ON GENDER IDENTITY” means the webpage “School
25 Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions”
26 available online at <https://www.cde.ca.gov/re/di/eo/faqs.asp>.

27
28

INTERROGATORIES

INTERROGATORY NO. 1:

Describe why the California Department of Education issued the 2016 LEGAL ADVISORY ON GENDER IDENTITY and accompanying FAQ PAGE ON GENDER IDENTITY.

INTERROGATORY NO. 2:

Describe under what legal authority the California Department of Education issued the 2016 LEGAL ADVISORY ON GENDER IDENTITY and accompanying FAQ PAGE ON GENDER IDENTITY.

INTERROGATORY NO. 3:

Identify the specific PERSONS involved in originally drafting, or subsequently reviewing and editing the 2016 LEGAL ADVISORY ON GENDER IDENTITY and accompanying FAQ PAGE ON GENDER IDENTITY.

INTERROGATORY NO. 4:

For each PERSON identified in response to Interrogatory No. 3, identify the dates of their involvement, their specific role(s) within the California Department of Education, and their specific role(s) with respect to the webpages.

INTERROGATORY NO. 5:

Describe all legal authority, including case law, undergirding the following statement in FAQ PAGE ON GENDER IDENTITY:

With rare exceptions, schools are required to respect the limitations that a student places on the disclosure of their transgender status, including not sharing that information with the student’s parents. In those very rare circumstances where a school believes there is a specific and compelling “need to know,” the school should inform the student that the school intends to disclose the student’s transgender status, giving the student the opportunity to make that disclosure her or himself.... Schools are not permitted to disclose private student information to other students or the parents of those students.

1 **INTERROGATORY NO. 6:**

2 Describe as many circumstances as possible that would constitute “a specific
3 and compelling ‘need to know’” warranting disclosure of a student’s transgender or
4 gender diverse gender identity to his parents, over his objection, as stated in the FAQ
5 ON GENDER IDENTITY.

6 **INTERROGATORY NO. 7:**

7 If YOU contend that revealing a student’s transgender or gender diverse
8 gender identity to his parents, over his objection, is harassment, please explain how
9 doing so is harassing.

10 **INTERROGATORY NO. 8:**

11 If YOU contend that revealing a student’s transgender or gender diverse
12 gender identity to his parents, over his objection, is discrimination, please explain
13 how doing so is discriminatory.

14 **INTERROGATORY NO. 9:**

15 Please explain how a student has a legitimate expectation of privacy regarding
16 his transgender or gender diverse gender identity when attending a school that has a
17 policy that requires all students and teachers to acknowledge and affirm his
18 transgender or gender diverse gender identity.

19 **INTERROGATORY NO. 10:**

20 Please explain whether the California Department of Education has the
21 authority to withhold state education funds from a school district that adopts a policy
22 to disclose students’ gender identity to their parents.

23 **INTERROGATORY NO. 11:**

24 If YOU contend that informing parents of their child’s gender identity and
25 using preferred names and pronouns is not speech, please explain why.

26 **INTERROGATORY NO. 12:**

27 If YOU contend that the topic of gender identity is not a matter of public
28 concern, please explain why.

1 **INTERROGATORY NO. 13:**

2 If YOU contend that withholding a student’s gender identity from his or her
3 parents, absent express permission, satisfies strict scrutiny, please explain why.

4 **INTERROGATORY NO. 14:**

5 If YOU contend that withholding a student’s gender identity from his or her
6 parents, absent express permission, does not violate parental rights under the
7 Fourteenth Amendment, please explain why.

8 **INTERROGATORY NO. 15:**

9 Please explain whether the California Department of Education or any of its
10 officials have had any role, and if so the nature of that role, in the lawsuit *People v.*
11 *Chino Valley Unified School Dist.*, No. CIV SB 2317301 (Cal. Super. Ct., San
12 Bernardino County, Aug. 28, 2023).

13 **INTERROGATORY NO. 16:**

14 Please explain whether the California Department of Education or any of its
15 officials have had any role, and if so the nature of that role, in the lawsuit *Regino v.*
16 *Staley*, No. 2:23-cv-32 (E.D. Cal., Jan. 6, 2023).

17 **INTERROGATORY NO. 17:**

18 Please identify any and all investigations that the California Department of
19 Education has initiated or concluded, since on January 1, 2020, concerning any local
20 education agency’s adoption of policies relating in any way to gender identity.

21
22
23
24
25
26
27
28

LiMANDRI & JONNA LLP

Dated: February 9, 2024

By:


Charles S. LiMandri
Paul M. Jonna
Mark D. Myers
Jeffrey M. Trissell
Attorneys for Plaintiffs

EXHIBIT 5

1 Charles S. LiMandri, SBN 110841
2 cslimandri@limandri.com
3 Paul M. Jonna, SBN 265389
4 pjonna@limandri.com
5 Mark D. Myers, SBN 235719
6 mmyers@limandri.com
7 Jeffrey M. Trissell, SBN 292480
8 jtrissell@limandri.com
9 Milan L. Brandon II, SBN 326953
10 mbrandon@limandri.com
11 LiMANDRI & JONNA LLP
12 P.O. Box 9120
13 Rancho Santa Fe, CA 92067
14 Telephone: (858) 759-9930
15 Facsimile: (858) 759-9938

Thomas Brejcha, *pro hac vice**
tbrejcha@thomasmoresociety.org
Peter Breen, *pro hac vice**
pbreen@thomasmorsociety.org
THOMAS MORE SOCIETY
309 W. Washington St., Ste. 1250
Chicago, IL 60606
Tel: (312) 782-1680
*Application forthcoming

Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an
16 individual, and LORI ANN WEST, an
17 individual,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity as
21 President of the EUSD Board of
22 Education, et al.,

23 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**PLAINTIFFS' REQUESTS
FOR PRODUCTION OF
DOCUMENTS TO STATE
DEFENDANTS**

[SET ONE]

Judge: Hon. Roger T. Benitez
Courtroom: 5A

Action Filed: April 27, 2023
Trial Date: Not Set

1 PROPOUNDING PARTIES: Elizabeth Mirabelli and Lori Ann West.

2 RESPONDING PARTIES: Governor Gavin Newsom, Attorney General
3 Rob Bonta, State Superintendent Tony Thurmond, California State Board President
4 Darling-Hammond, State Board Vice President Cynthia Glover Woods, State Board
5 Member Francisco Escobedo, State Board Member Brenda Lewis, State Board
6 Member James J. McQuillen, State Board Member Sharon Olken, State Board
7 Member Gabriela Orozco-Gonzalez, State Board Member Kim Pattillo Brownson,
8 State Board Member Haydee Rodriguez, State Board Member Alison Yoshimoto-
9 Towery, State Board Member Anya Ayyappan (collectively, “State Defendants”).

10 SET NO.: One [1-14].

11

12 Pursuant to Fed. R. Civ. P. 34, Plaintiffs Elizabeth Mirabelli and Lori Ann
13 West, hereby requests that the the State Defendants produce and permit visual
14 inspection and photocopying of the documents and other tangible things identified
15 below. Pursuant to Rule 34(b)(2)(A), written responses to these requests are due by
16 **Monday, March 11, 2024**. Pursuant to Rule 34(b)(1)(B), the documents must be
17 produced on that same date. The place of production shall be the LiMandri & Jonna,
18 LLP, located at 16236 San Dieguito Road, Suite 3-15, Rancho Santa Fe, California
19 92067 (physical address). Alternatively, responding party may comply with these
20 requests by sending copies of all responsive documents to P.O. Box 9120, Rancho
21 Santa Fe, CA 92067 (mailing address).

22 Pursuant to Fed. R. Civ. P. 26(b)(5)(A)(ii), for any requested document that
23 you claim to be protected by immunity or privilege, state as to each such document
24 the following information: (a) the author(s); (b) the recipient(s), including those
25 copied; (c) the subject matter of the document; and (d) the basis for the claim of
26 immunity or privilege.

27 If any requested document is known to have been in existence but no longer
28 exists, state as to each such document the following information: (a) a description of

1 the document[s] to the fullest extent possible, (c) the request to which they are
2 responsive, (c) the circumstances under which such document[s] were lost or
3 destroyed; and (d) identify persons having knowledge of the content of such
4 documents.

5 **DEFINITIONS**

6 1. “YOU” and “YOUR” means the party responding to these requests,
7 and includes any predecessors, successors, partners, subsidiaries, affiliates, partners,
8 joint venturers, officers, directors, agents, employees, insurance company(s),
9 attorneys, accountants, adjusters, contractors, consultants, underwriters,
10 investigators, claims handlers, or other person(s) acting at that party’s behest or on
11 that party’s behalf or who is otherwise within its control or obligated to respond to
12 these requests for production.

13 2. “PERSON” means a natural person, firm, association, organizations,
14 partnership, business, trust, corporation or public entity.

15 3. The term “DOCUMENTS” as used in these Requests for Production is
16 intended to be defined as in Fed. R. Civ. P. 34 and includes any printed, handwritten,
17 recorded, electronically stored or graphic matter of every type and description,
18 however and by whomever made, reproduced or disseminated, in your actual or
19 constructive custody or control. This includes electronically stored information (ESI)
20 as that term is defined in Fed. R. Civ. P. 34. ESI may be generated or stored in several
21 locations, including emails and email attachments, Excel spreadsheets, word
22 processing documents, databases, voicemails, text messages, internet history logs,
23 backup tapes, social media platforms, devices connected to the Internet of Things
24 (IoT), workplace collaboration tools (WCTs), and ephemeral messaging applications.

25 4. “COMMUNICATION” or “COMMUNICATIONS” means the
26 transmittal of information (in the form of facts, ideas, inquiries, or otherwise)
27 whether orally, in writing, or otherwise.

28 ///

1 5. "PLAINTIFFS" means Plaintiff Elizabeth Mirabelli and Plaintiff Lori
2 Ann West.

3 6. "COMPLAINT" means the complaint filed in this case.

4 7. "ANSWER" means YOUR answer filed in this case.

5 8. "2016 LEGAL ADVISORY ON GENDER IDENTITY" means the
6 webpage "Legal Advisory regarding application of California's antidiscrimination
7 statutes to transgender youth in schools" available online at
8 <https://www.cde.ca.gov/re/di/eo/legaladvisory.asp>.

9 9. "FAQ PAGE ON GENDER IDENTITY" means the webpage "School
10 Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions"
11 available online at <https://www.cde.ca.gov/re/di/eo/faqs.asp>.

12
13 **REQUESTS FOR PRODUCTION**

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

15 All DOCUMENTS identified in YOUR initial disclosures in this case.

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

17 All DOCUMENTS identified in YOUR responses to interrogatories.

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

19 All DOCUMENTS created by YOU or on YOUR behalf which in any way
20 memorialize your recollection of any events relating to events alleged in the
21 COMPLAINT.

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

23 All DOCUMENTS which substantiate any fact which YOU contend is
24 relevant to the defenses raised in YOUR ANSWER filed in this case.

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

26 All DOCUMENTS exchanged with counsel for the Plaintiff in *People v. Chino*
27 *Valley Unified School Dist.*, No. CIV SB 2317301 (Cal. Super. Ct., San Bernardino
28 County, Aug. 28, 2023).

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

2 All DOCUMENTS exchanged with counsel for the Defendant in *Regino v.*
3 *Staley*, No. 2:23-cv-32 (E.D. Cal., Jan. 6, 2023).

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

5 All DOCUMENTS relating to the adoption of the California Department of
6 Education's 2016 LEGAL ADVISORY ON GENDER IDENTITY.

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

8 All DOCUMENTS relating to the adoption of the California Department of
9 Education's FAQ PAGE ON GENDER IDENTITY.

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

11 All emails relating to the adoption of the California Department of Education's
12 2016 LEGAL ADVISORY ON GENDER IDENTITY, including specifically
13 COMMUNICATIONS to and from PERSONS in the CDE's School Health and
14 Safety Office.

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

16 All emails relating to the adoption of the California Department of Education's
17 FAQ PAGE ON GENDER IDENTITY, including specifically
18 COMMUNICATIONS to and from PERSONS in the CDE's School Health and
19 Safety Office.

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

21 All versions of the California Department of Education's 2016 LEGAL
22 ADVISORY ON GENDER IDENTITY and accompanying FAQ PAGE ON
23 GENDER IDENTITY.

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

25 All versions of the California Department of Education's FAQ PAGE ON
26 GENDER IDENTITY.

27 ///

28 ///

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

2 All DOCUMENTS concerning the California Department of Education’s
3 investigation into Rockland Unified School District, Case Matter No. 2023-0202.

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

5 All DOCUMENTS concerning any and all investigations that the California
6 Department of Education has initiated or concluded, since on January 1, 2020,
7 concerning any local education agency’s adoption of policies relating in any way to
8 gender identity.

9
10 LiMANDRI & JONNA LLP

11 Dated: February 9, 2024

12 By:



13 Charles S. LiMandri
14 Paul M. Jonna
15 Mark D. Myers
16 Jeffrey M. Trissell
17 Milan L. Brandon II
18 Attorneys for Plaintiffs
19
20
21
22
23
24
25
26
27
28

EXHIBIT 6

1 Charles S. LiMandri, SBN 110841
2 cslimandri@limandri.com
3 Paul M. Jonna, SBN 265389
4 pjonna@limandri.com
5 Mark D. Myers, SBN 235719
6 mmyers@limandri.com
7 Jeffrey M. Trissell, SBN 292480
8 jtrissell@limandri.com
9 Milan L. Brandon II, SBN 326953
10 mbrandon@limandri.com
11 LiMANDRI & JONNA LLP
12 P.O. Box 9120
13 Rancho Santa Fe, CA 92067
14 Telephone: (858) 759-9930
15 Facsimile: (858) 759-9938

Thomas Brejcha, *pro hac vice**
tbrejcha@thomasmoresociety.org
Peter Breen, *pro hac vice**
pbreen@thomasmorsociety.org
THOMAS MORE SOCIETY
309 W. Washington St., Ste. 1250
Chicago, IL 60606
Tel: (312) 782-1680
*Application forthcoming

Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an
16 individual, and LORI ANN WEST, an
17 individual,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity as
21 President of the EUSD Board of
22 Education, et al.,

23 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**PLAINTIFF LORI ANN
WEST’S REQUESTS FOR
ADMISSION TO THE STATE
DEFENDANTS**

[SET ONE]

Judge: Hon. Roger T. Benitez
Courtroom: 5A

Action Filed: April 27, 2023
Trial Date: Not Set

1 PROPOUNDING PARTIES: Lori Ann West.

2 RESPONDING PARTIES: Governor Gavin Newsom, Attorney General
3 Rob Bonta, State Superintendent Tony Thurmond, California State Board President
4 Darling-Hammond, State Board Vice President Cynthia Glover Woods, State Board
5 Member Francisco Escobedo, State Board Member Brenda Lewis, State Board
6 Member James J. McQuillen, State Board Member Sharon Olken, State Board
7 Member Gabriela Orozco-Gonzalez, State Board Member Kim Pattillo Brownson,
8 State Board Member Haydee Rodriguez, State Board Member Alison Yoshimoto-
9 Towery, State Board Member Anya Ayyappan (collectively, "State Defendants").

10 SET NO.: One [1-10].

11

12 Pursuant to Fed. R. Civ. P. 36, Plaintiff Lori Ann West hereby requests that the
13 State Defendants admit the matters identified below. Pursuant to Rule 36(a)(3),
14 written responses to these requests are due by **Monday, March 11, 2024**. The
15 responding party may deliver their original responses to LiMandri & Jonna, LLP,
16 located at 16236 San Dieguito Road, Suite 3-15, Rancho Santa Fe, California 92067
17 (physical address). Alternatively, responding party may mail its original responses to
18 P.O. Box 9120, Rancho Santa Fe, CA 92067 (mailing address).

19

20

DEFINITIONS

21 1. "YOU" and "YOUR" means the party responding to these requests,
22 and includes any predecessors, successors, partners, subsidiaries, affiliates, partners,
23 joint venturers, officers, directors, agents, employees, insurance company(s),
24 attorneys, accountants, adjusters, contractors, consultants, underwriters,
25 investigators, claims handlers, or other person(s) acting at that party's behest or on
26 that party's behalf or who is otherwise within its control or obligated to respond to
27 these requests for production.

28 ///

1 2. “PERSON” means a natural person, firm, association, organizations,
2 partnership, business, trust, corporation or public entity.

3 3. The term “DOCUMENTS” as used in these Requests for Production is
4 intended to be defined as in Fed. R. Civ. P. 34 and includes any printed, handwritten,
5 recorded, electronically stored or graphic matter of every type and description,
6 however and by whomever made, reproduced or disseminated, in your actual or
7 constructive custody or control. This includes electronically stored information (ESI)
8 as that term is defined in Fed. R. Civ. P. 34. ESI may be generated or stored in several
9 locations, including emails and email attachments, Excel spreadsheets, word
10 processing documents, databases, voicemails, text messages, internet history logs,
11 backup tapes, social media platforms, devices connected to the Internet of Things
12 (IoT), workplace collaboration tools (WCTs), and ephemeral messaging applications.

13 4. “COMMUNICATION” or “COMMUNICATIONS” means the
14 transmittal of information (in the form of facts, ideas, inquiries, or otherwise)
15 whether orally, in writing, or otherwise.

16 5. “PLAINTIFFS” means Plaintiff Elizabeth Mirabelli and Plaintiff Lori
17 Ann West.

18 6. “COMPLAINT” means the complaint filed in this case.

19 7. “ANSWER” means the answer filed in this case.

20 8. “2016 LEGAL ADVISORY ON GENDER IDENTITY” means the
21 webpage “Legal Advisory regarding application of California’s antidiscrimination
22 statutes to transgender youth in schools” available online at
23 <https://www.cde.ca.gov/re/di/eo/legaladvisory.asp>.

24 9. “FAQ PAGE ON GENDER IDENTITY” means the webpage “School
25 Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions”
26 available online at <https://www.cde.ca.gov/re/di/eo/faqs.asp>.

27 ///

28 ///

1 **REQUESTS FOR ADMISSION**

2 **REQUEST FOR ADMISSION No. 1:**

3 Admit that the California Department of Education’s 2016 LEGAL
4 ADVISORY ON GENDER IDENTITY and FAQ PAGE ON GENDER
5 IDENTTIY provide that a student’s gender identity may be disclosed to his or her
6 parents if there is a legitimate reason for doing so.

7 **REQUEST FOR ADMISSION No. 2:**

8 Admit that the California Department of Education’s 2016 LEGAL
9 ADVISORY ON GENDER IDENTITY and FAQ PAGE ON GENDER
10 IDENTTIY provide that a student’s gender identity may be disclosed to his or her
11 parents if the parents have a need to know.

12 **REQUEST FOR ADMISSION No. 3:**

13 Admit that the California Department of Education’s 2016 LEGAL
14 ADVISORY ON GENDER IDENTITY and FAQ PAGE ON GENDER
15 IDENTTIY provide that a student’s gender identity may be disclosed to his or her
16 parents if there is a compelling reason for doing so.

17 **REQUEST FOR ADMISSION No. 4:**

18 Admit that the California Department of Education’s 2016 LEGAL
19 ADVISORY ON GENDER IDENTITY and FAQ PAGE ON GENDER
20 IDENTTIY invite the government to decide which reasons for revealing a student’s
21 gender identity to his or her parents are worthy of solicitude.

22 **REQUEST FOR ADMISSION No. 5:**

23 Admit that the California Department of Education’s 2016 LEGAL
24 ADVISORY ON GENDER IDENTITY and FAQ PAGE ON GENDER
25 IDENTTIY require teachers to withhold information regarding a student’s gender
26 identity from his or her parents, unless the student has affirmatively granted
27 permission, regardless of whether the student is suffering from gender dysphoria or
28 not.

1 **REQUEST FOR ADMISSION NO. 6:**

2 Admit that the California Department of Education believes that its 2016
3 LEGAL ADVISORY ON GENDER IDENTITY accurately summarizes the law
4 relating to how California school districts must treat transgender or gender diverse
5 students.

6 **REQUEST FOR ADMISSION NO. 7:**

7 Admit that the California Department of Education believes that its FAQ
8 PAGE ON GENDER IDENTTIY accurately summarizes the law relating to how
9 California school districts must treat transgender or gender diverse students.

10 **REQUEST FOR ADMISSION NO. 8:**

11 Admit that the California Department of Education can withhold state funding
12 under Cal. Gov. Code § 11135 to California school districts that do not treat
13 transgender or gender diverse students in accordance with the law.

14 **REQUEST FOR ADMISSION NO. 9:**

15 Admit that the California Department of Education can withhold state funding
16 under Cal. Educ. Code § 250 to California school districts that do not treat
17 transgender or gender diverse students in accordance with the law.

18 **REQUEST FOR ADMISSION NO. 10:**

19 Admit that the California Department of Education can withhold state funding
20 under Cal. Code Regs., tit. 5, § 4670 to California school districts that do not treat
21 transgender or gender diverse students in accordance with the law.

22

23

LiMANDRI & JONNA LLP

24

25 Dated: February 9, 2024

By:



26

Charles S. LiMandri

27

Paul M. Jonna

28

Mark D. Myers

Jeffrey M. Trissell

Attorneys for Plaintiffs

EXHIBIT 7

1 Charles S. LiMandri, SBN 110841
2 cslimandri@limandri.com
3 Paul M. Jonna, SBN 265389
4 pjonna@limandri.com
5 Mark D. Myers, SBN 235719
6 mmyers@limandri.com
7 Jeffrey M. Trissell, SBN 292480
8 jtrissell@limandri.com
9 Milan L. Brandon II, SBN 326953
10 mbrandon@limandri.com
11 LiMANDRI & JONNA LLP
12 P.O. Box 9120
13 Rancho Santa Fe, CA 92067
14 Telephone: (858) 759-9930
15 Facsimile: (858) 759-9938

Thomas Brejcha, *pro hac vice**
tbrejcha@thomasmoresociety.org
Peter Breen, *pro hac vice**
pbreen@thomasmorsociety.org
THOMAS MORE SOCIETY
309 W. Washington St., Ste. 1250
Chicago, IL 60606
Tel: (312) 782-1680
*Application forthcoming

Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an
16 individual, and LORI ANN WEST, an
17 individual,

18 Plaintiffs,

19 v.

20 MARK OLSON, in his official capacity as
21 President of the EUSD Board of
22 Education, et al.,

23 Defendants.

Case No.: 3:23-cv-0768-BEN-VET

**PLAINTIFF ELIZABETH
MIRABELLI'S REQUESTS
FOR ADMISSION TO ALL
DEFENDANTS**

[SET ONE]

Judge: Hon. Roger T. Benitez
Courtroom: 5A

Action Filed: April 27, 2023
Trial Date: Not Set

1 PROPOUNDING PARTIES: Elizabeth Mirabelli and Lori Ann West.

2 RESPONDING PARTIES: Board President Mark Olson, Board Vice
3 President Frank Huston, Board Clerk Joan Gardner, Board Member Doug Paulson,
4 Board Member Zesty Harper, Superintendent Luis Rankins-Ibarra, Assistant
5 Superintendent John Albert, Integrated Student Services Director Trent Smith,
6 Integrated Student Supports Director Tracy Schmidt, Rincon Middle School
7 Principal Steve White (collectively, “EUSD Defendants”); and Governor Gavin
8 Newsom, Attorney General Rob Bonta, State Superintendent Tony Thurmond,
9 California State Board President Darling-Hammond, State Board Vice President
10 Cynthia Glover Woods, State Board Member Francisco Escobedo, State Board
11 Member Brenda Lewis, State Board Member James J. McQuillen, State Board
12 Member Sharon Olken, State Board Member Gabriela Orozco-Gonzalez, State Board
13 Member Kim Pattillo Brownson, State Board Member Haydee Rodriguez, State
14 Board Member Alison Yoshimoto-Towery, State Board Member Anya Ayyappan
15 (collectively, “State Defendants”).

16 SET NO.: One [1-47].

17
18 Pursuant to Fed. R. Civ. P. 36, Plaintiffs Elizabeth Mirabelli and Lori Ann
19 West, hereby requests that the EUSD Defendants and the State Defendants admit
20 the matters identified below. Pursuant to Rule 36(a)(3), written responses to these
21 requests are due by **Monday, March 11, 2024**. The responding party may deliver
22 their original responses to LiMandri & Jonna, LLP, located at 16236 San Dieguito
23 Road, Suite 3-15, Rancho Santa Fe, California 92067 (physical address).
24 Alternatively, responding party may mail its original responses to P.O. Box 9120,
25 Rancho Santa Fe, CA 92067 (mailing address).

26 ///

27 ///

28 ///

DEFINITIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. “YOU” and “YOUR” means the party responding to these requests, and includes any predecessors, successors, partners, subsidiaries, affiliates, partners, joint venturers, officers, directors, agents, employees, insurance company(s), attorneys, accountants, adjusters, contractors, consultants, underwriters, investigators, claims handlers, or other person(s) acting at that party’s behest or on that party’s behalf or who is otherwise within its control or obligated to respond to these requests for production.

2. “PERSON” means a natural person, firm, association, organizations, partnership, business, trust, corporation or public entity.

3. The term “DOCUMENTS” as used in these Requests for Production is intended to be defined as in Fed. R. Civ. P. 34 and includes any printed, handwritten, recorded, electronically stored or graphic matter of every type and description, however and by whomever made, reproduced or disseminated, in your actual or constructive custody or control. This includes electronically stored information (ESI) as that term is defined in Fed. R. Civ. P. 34. ESI may be generated or stored in several locations, including emails and email attachments, Excel spreadsheets, word processing documents, databases, voicemails, text messages, internet history logs, backup tapes, social media platforms, devices connected to the Internet of Things (IoT), workplace collaboration tools (WCTs), and ephemeral messaging applications.

4. “COMMUNICATION” or “COMMUNICATIONS” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) whether orally, in writing, or otherwise.

5. “PLAINTIFFS” means Plaintiff Elizabeth Mirabelli and Plaintiff Lori Ann West.

6. “COMPLAINT” means the complaint filed in this case.

7. “ANSWER” means the answer filed in this case.

8. “2016 LEGAL ADVISORY ON GENDER IDENTITY” means the

1 webpage “Legal Advisory regarding application of California’s antidiscrimination
2 statutes to transgender youth in schools” available online at
3 <https://www.cde.ca.gov/re/di/eo/legaladvisory.asp>.

4 9. “FAQ PAGE ON GENDER IDENTITY” means the webpage “School
5 Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions”
6 available online at <https://www.cde.ca.gov/re/di/eo/faqs.asp>.

7

8 **REQUESTS FOR ADMISSION**

9 **REQUEST FOR ADMISSION NO. 1:**

10 Admit that informing parents of their child’s gender identity is speech.

11 **REQUEST FOR ADMISSION NO. 2:**

12 Admit that using names and pronouns—whether legal names, biological
13 pronouns, or preferred names and pronouns—is speech.

14 **REQUEST FOR ADMISSION NO. 3:**

15 Admit that the topic of gender identity is a matter of public concern.

16 **REQUEST FOR ADMISSION NO. 4:**

17 Admit that the topic of the rights of transgender or gender diverse individuals
18 is a matter of public concern.

19 **REQUEST FOR ADMISSION NO. 5:**

20 Admit that the topic of gender incongruence among minors is a matter of
21 public concern.

22 **REQUEST FOR ADMISSION NO. 6:**

23 Admit that the topic of the rights of parents to be involved in decisions
24 regarding how to address gender incongruence among their own minor children or
25 adolescents is a matter of public concern.

26 **REQUEST FOR ADMISSION NO. 7:**

27 Admit that Plaintiffs’ official job duties of teaching involve exercising academic
28 freedom.

1 **REQUEST FOR ADMISSION NO. 8:**

2 Admit that Plaintiffs' official job duties do not involve being a courier to
3 disseminate ideology generally.

4 **REQUEST FOR ADMISSION NO. 9:**

5 Admit that Plaintiffs' official job duties do not involve being a courier to
6 disseminate ideology regarding gender identity.

7 **REQUEST FOR ADMISSION NO. 10:**

8 Admit that Plaintiffs' official job duties do not involve engaging in illegal
9 conduct.

10 **REQUEST FOR ADMISSION NO. 11:**

11 Admit that Plaintiffs' official job duties do not involve engaging in dishonesty.

12 **REQUEST FOR ADMISSION NO. 12:**

13 Admit that Plaintiffs' official job duties involve including parents in the
14 education and development of their children.

15 **REQUEST FOR ADMISSION NO. 13:**

16 Admit that exempting Plaintiffs from any obligation to withhold information
17 regarding a child's gender identity from his or her parents will not cause a substantial
18 disruption in their workplace.

19 **REQUEST FOR ADMISSION NO. 14:**

20 Admit that Plaintiffs' objection to withholding information regarding a child's
21 gender identity from his or her parents is based on their sincerely held religious beliefs.

22 **REQUEST FOR ADMISSION NO. 15:**

23 Admit that terminating Plaintiffs for refusing to withhold information
24 regarding a child's gender identity from his or her parents is a substantial burden as
25 understood by the Free Exercise Clause of the U.S. Constitution.

26 **REQUEST FOR ADMISSION NO. 16:**

27 Admit that exempting students, substitute teachers, or classified staff, or
28 administrative staff from an obligation to withhold information regarding a fellow

1 student's gender identity from his or her parents will undermine the government's
2 interest in withholding information regarding gender identity, in a similar way as
3 exempting Plaintiffs.

4 **REQUEST FOR ADMISSION NO. 17:**

5 Admit that you lack any compelling interest in violating the Fourteenth
6 Amendment substantive due process rights of parents.

7 **REQUEST FOR ADMISSION NO. 18:**

8 Admit that requiring Plaintiffs to withhold information regarding a child's
9 gender identity from his or her parents is not the least restrictive means of achieving
10 the interests underlying such a requirement.

11 **REQUEST FOR ADMISSION NO. 19:**

12 Admit that, even if a child does not want his or her parents to know of his or
13 her gender identity, revealing such information is not always detrimental to the child.

14 **REQUEST FOR ADMISSION NO. 20:**

15 Admit that, if a child is suffering from gender dysphoria, social transition is a
16 form of psycho-social treatment for that disorder.

17 **REQUEST FOR ADMISSION NO. 21:**

18 Admit that it is clearly established that if a defendant has in place a system of
19 individualized exemptions, it must extend that system to religious exemptions or face
20 strict scrutiny review.

21 **REQUEST FOR ADMISSION NO. 22:**

22 Admit that a child's statement that he or she wishes to withhold information
23 from his or her parents is not adequate evidence to conclude that the parents will
24 harm the child if provided with that information.

25 **REQUEST FOR ADMISSION NO. 23:**

26 Admit that all of the documents attached to the operative complaint are true
27 and correct copies of what they purport to be.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LiMANDRI & JONNA LLP

Dated: February 9, 2024

By: 
Charles S. LiMandri
Paul M. Jonna
Mark D. Myers
Jeffrey M. Trissell
Milan L. Brandon II
Attorneys for Plaintiffs

EXHIBIT 8

From: [Paul Jonna](#)
To: [Kevin Quade](#); [Daniel Shinoff](#); [Christopher Mandarano](#)
Cc: [Charles Limandri](#); [Mark Myers](#); [Jeffrey Trissell](#); [Jack Sleeth](#); [Gil Abed](#); [Maurice Bumbu](#); [Nopealey Lay](#); [Len Garfinkel](#); [Virginia Cale](#); [Darrell Spence](#); [Emmanuelle Soichet](#)
Subject: RE: [EXTERNAL] RE: Mirabelli v. Olson - Meet & Confer
Date: Wednesday, February 14, 2024 5:13:33 PM
Attachments: [image001.png](#)

Thanks Kevin. If you can explain the circumstances unique to the Governor and AG re the 12(b)(1) arguments, we would appreciate more information before the call. Otherwise, we will look forward to discussing with you tomorrow.

Paul M. Jonna | Partner
LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938
pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>
Sent: Wednesday, February 14, 2024 2:58 PM
To: Paul Jonna <pjonna@limandri.com>; Daniel Shinoff <DShinoff@as7law.com>; Christopher Mandarano <CMandarano@cde.ca.gov>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Jack Sleeth <JSleeth@as7law.com>; Gil Abed <GAbed@as7law.com>; Maurice Bumbu <mbumbu@as7law.com>; Nopealey Lay <nlay@AS7Law.com>; Len Garfinkel <LGarfinkel@cde.ca.gov>; Virginia Cale <VCale@cde.ca.gov>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>
Subject: RE: [EXTERNAL] RE: Mirabelli v. Olson - Meet & Confer

Hi Paul – On the motions to dismiss, we’re making 12(b)(1) arguments based on lack of standing to sue either the Governor or the Attorney General, as well as arguments that both Defendants are covered by 11th Amendment immunity. Though the Court previously rejected such arguments with respect to the State Education Defendants, we think there are specific circumstances unique to the Governor and Attorney General that dictate an opposite result.

On the ENE conference continuance, the court’s initial order scheduling the conference states that requests for continuance should be done via Joint Motion, which we understand in the Southern District is essentially a

stipulation. Since the ENE conference ordinarily doesn't happen until after a Defendant files an answer to the complaint (within 45 days under the local rules) it would be counterproductive to hold the conference on February 28, 2024. We were just recently served with the FAC and are on the clock for our responsive pleading, so there has been no time to consider the factors (let alone the required documents) that go into the ENE conference.

On discovery, we think it makes sense to hold off, at least as to Defendants Newsom and Bonta, for a brief time to allow the court to rule on the MTDs. Those motions is likely dispositive as to whether either Defendant is a proper party in the case. Should discovery proceed on the timeline outlined in your requests and one or both Defendants are later dismissed from the case, the work of both parties that went into the discovery process will necessarily have been wasted. Moreover, since your clients have obtained a preliminary injunction that safeguards their interests during the pendency of the case, there is little urgency that justifies pressing ahead with discovery in the face of these concerns.

Look forward to speaking with you and everyone else tomorrow.

Kevin

From: Paul Jonna <pjonna@limandri.com>
Sent: Wednesday, February 14, 2024 11:55 AM
To: Kevin Quade <Kevin.Quade@doj.ca.gov>; Daniel Shinoff <DShinoff@as7law.com>; Christopher Mandarano <CMandarano@cde.ca.gov>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Jack Sleeth <JSleeth@as7law.com>; Gil Abed <GAbed@as7law.com>; Maurice Bumbu <mbumbu@as7law.com>; Nopealey Lay <nlay@AS7Law.com>; Len Garfinkel <LGarfinkel@cde.ca.gov>; Virginia Cale <VCale@cde.ca.gov>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>
Subject: RE: [EXTERNAL] RE: Mirabelli v. Olson - Meet & Confer

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Kevin:

It would help make the call more productive if you could send us more information via email before we speak. For example, perhaps you can at least summarize the issues you intend to raise in the motions to dismiss. Thanks.

Paul M. Jonna | Partner
LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938
pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>
Sent: Wednesday, February 14, 2024 10:31 AM
To: Daniel Shinoff <DShinoff@as7law.com>; Christopher Mandarano <CMandarano@cde.ca.gov>
Cc: Paul Jonna <pjonna@limandri.com>; Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Jack Sleeth <JSleeth@as7law.com>; Gil Abed <GAbed@as7law.com>; Maurice Bumbu <mbumbu@as7law.com>; Nopealey Lay <nlay@AS7Law.com>; Len Garfinkel <LGarfinkel@cde.ca.gov>; Virginia Cale <VCale@cde.ca.gov>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>
Subject: RE: [EXTERNAL] RE: Mirabelli v. Olson - Meet & Confer

Thank you everyone for the quick response. Let's do tomorrow at 12:30. I'll send the calendar invite to everyone on this email.

Kevin

From: Daniel Shinoff <DShinoff@as7law.com>
Sent: Wednesday, February 14, 2024 10:22 AM
To: Christopher Mandarano <CMandarano@cde.ca.gov>
Cc: Paul Jonna <pjonna@limandri.com>; Kevin Quade <Kevin.Quade@doj.ca.gov>; Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Jack Sleeth <Sleeth@as7law.com>; Gil Abed <GAbed@as7law.com>; Maurice Bumbu <mbumbu@as7law.com>; Nopealey Lay <nlay@AS7Law.com>; Len Garfinkel <LGarfinkel@cde.ca.gov>; Virginia Cale <VCale@cde.ca.gov>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>
Subject: Re: [EXTERNAL] RE: Mirabelli v. Olson - Meet & Confer

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

11-2 tomorrow works for me as well.
Daniel
Sent from my iPhone

On Feb 14, 2024, at 10:14 AM, Christopher Mandarano <CMandarano@cde.ca.gov> wrote:

We can also be available tomorrow between 11 AM and 2 PM.

Chris Mandarano, Deputy General Counsel
Legal, Audits and Charters Branch
California Department of Education
1430 N Street, Suite 5319
Sacramento, CA 95814-5901
Phone: 916-319-0288
Fax #: 916-322-2549
cmandarano@cde.ca.gov

This communication with its contents may contain confidential and or legally privileged information. It is solely for the use of the intended recipient(s). If you are not the intended recipient, or an employee, or agent responsible for delivering this message to the intended recipient, you are advised that any disclosure, publication, copying, or the taking of any action in reliance upon this communication is prohibited. If you have received this communication in error, please notify the sender immediately by reply email and destroy and or delete all copies of this communication. Thank you.

From: Paul Jonna <pjonna@limandri.com>
Sent: Wednesday, February 14, 2024 10:12 AM
To: Kevin Quade <Kevin.Quade@doj.ca.gov>; Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; dshinoff@as7law.com <dshinoff@as7law.com>; jsleeth@as7law.com <jsleeth@as7law.com>; gabed@as7law.com <gabed@as7law.com>; mbumbu@as7law.com <mbumbu@as7law.com>; nlay@as7law.com <nlay@as7law.com>; Len Garfinkel <LGarfinkel@cde.ca.gov>; Christopher Mandarano <CMandarano@cde.ca.gov>; Virginia Cale <VCale@cde.ca.gov>
Cc: Darrell Spence <Darrell.Spence@doj.ca.gov>; emmanuelle.soichet@doj.ca.gov <emmanuelle.soichet@doj.ca.gov>
Subject: [EXTERNAL] RE: Mirabelli v. Olson - Meet & Confer

CAUTION! This email originated from outside the California Department of Education. Be careful of links and attachments.

I have an all day mediation Friday, but could speak tomorrow between 11am-2pm PT.

Paul M. Jonna | Partner
LiMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938
pjonna@limandri.com | www.limandri.com

<image002.png>

This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>
Sent: Wednesday, February 14, 2024 10:10 AM
To: Paul Jonna <pjonna@limandri.com>; Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; dshinoff@as7law.com; jsleeth@as7law.com; gabed@as7law.com; mbumbu@as7law.com; nlay@as7law.com; lgarfinkel@cde.ca.gov; cmandarano@cde.ca.gov; vcale@cde.ca.gov
Cc: Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>
Subject: Mirabelli v. Olson - Meet & Confer

Good morning counsel – We’re looking to schedule a meet and confer in the next couple days to discuss a number of filings that we’re preparing on behalf of Defendants Newsom and Bonta. Specifically, we’d like to discuss our position and get everyone’s response with respect to the following potential filings:

- Motions to Dismiss under Rule 12(b)(1) filed separately for Defendants Newsom and Bonta
- A Joint Motion/stipulation to continue the ENE Conference now scheduled for February 28, 2024
- A Joint Motion/stipulation to extend Defendants Newsom and Bonta’s deadlines for responding Plaintiffs’ written discovery requests, or in the alternative, an *ex parte* application for stay of discovery pending resolution of the anticipated MTDs
- Any additional discovery topics pursuant to Rule 26

We are hoping to have this omnibus meet and confer either tomorrow or Friday and are pretty flexible to try and work with the parties’ schedules. Please let me know your availability and I will send out an invite for a time that hopefully works for everyone. Thank you!

Kevin

<image003.png> | **KEVIN L. QUADE**
Deputy Attorney General
Health, Education, and Welfare
Office of the Attorney General | Department of Justice | State of California
1300 I Street, Sacramento, California 95814
T. 916.210.7693

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act.

If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

EXHIBIT 9

From: [Kevin Quade](#)
To: [Paul Jonna](#)
Cc: [Charles Limandri](#); [Mark Myers](#); [Jeffrey Trissell](#); [Milan Brandon](#); [Darrell Spence](#); [Emmanuelle Soichet](#); [Kathy Denworth](#); [Rebecca Oakley](#)
Subject: RE: Mirabelli - Court Order
Date: Monday, March 4, 2024 11:31:23 AM
Attachments: [image001.png](#)
[image002.png](#)

Thank you. I'll send out the invite shortly.

From: Paul Jonna <pjonna@limandri.com>
Sent: Monday, March 4, 2024 11:30 AM
To: Kevin Quade <Kevin.Quade@doj.ca.gov>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Yes

Paul M. Jonna | Partner
LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938
pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>
Sent: Monday, March 4, 2024 11:28 AM
To: Paul Jonna <pjonna@limandri.com>

Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

Does 3:00 p.m. also work? I picked 2:00 and was reminded by member of our team that 3:00 works better for their schedule that afternoon. Thanks.

From: Paul Jonna <pjonna@limandri.com>
Sent: Monday, March 4, 2024 11:01 AM
To: Kevin Quade <Kevin.Quade@doj.ca.gov>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Works for me.

Paul M. Jonna | Partner
LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938
pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>
Sent: Monday, March 4, 2024 10:06 AM
To: Paul Jonna <pjonna@limandri.com>

Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

Hi Paul – Let's do 3/20 at 2:00 p.m. If that works, I'll send out a calendar invite to everyone on this chain.
Thanks

Kevin

From: Paul Jonna <pjonna@limandri.com>
Sent: Friday, March 1, 2024 11:14 AM
To: Kevin Quade <Kevin.Quade@doj.ca.gov>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

I can make myself available any of those days between 10am-4pm. 3/20 would work best.

Paul M. Jonna | Partner
LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938
pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>

Sent: Friday, March 1, 2024 11:10 AM

To: Paul Jonna <pjonna@limandri.com>

Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>

Subject: RE: Mirabelli - Court Order

Hi Paul – Before we can meet to discuss Rule 26 matters, we need to consult with both our internal and external clients, which could take a little time. We then want to find a date where Darrell, Emma, and I can all attend. Given our clients' schedules and our own conflicting calendars in the short term, it looks like 3/20-3/22 or thereabouts works best. Let me know what day works for you all and I can send out a calendar invite. Thank you.

Kevin



KEVIN L. QUADE

Deputy Attorney General

Health, Education, and Welfare

Office of the Attorney General | Department of Justice | State of California

1300 I Street, Sacramento, California 95814

T. 916.210.7693

From: Paul Jonna <pjonna@limandri.com>

Sent: Wednesday, February 28, 2024 10:25 AM

To: Kevin Quade <Kevin.Quade@doj.ca.gov>

Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>

Subject: RE: Mirabelli - Court Order

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Kevin, now that you've filed your responsive pleadings, let's set a date for the Rule 26 conference. What days work for you?

Paul M. Jonna | Partner

LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067

Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938

pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>
Sent: Thursday, February 22, 2024 12:55 PM
To: Paul Jonna <pjonna@limandri.com>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

Paul – Thank you for the confirmation. We’re not able agree to a date for the Rule 26 conference, as we’ve been focusing on our responsive pleadings and have not had time to discuss our positions for that conference with our clients, especially in light of the developments from yesterday’s court order. We’ll propose dates in the future. Thank you.

Kevin

From: Paul Jonna <pjonna@limandri.com>
Sent: Thursday, February 22, 2024 12:37 PM
To: Kevin Quade <Kevin.Quade@doj.ca.gov>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Kevin:

My prior email already confirmed that we are willing to hold another Rule 26 conference, and then reset the discovery response deadline accordingly. Yes, we are willing to withdraw the current requests. Please let me know your soonest availability for a Rule 26 conference. I suggest February 28 or 29 or March 1.

Paul M. Jonna | Partner

LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067

Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938

pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>

Sent: Thursday, February 22, 2024 12:25 PM

To: Paul Jonna <pjonna@limandri.com>

Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>

Subject: RE: Mirabelli - Court Order

Paul – Thanks for the quick reply. Regardless of the propriety of the Feb. 9 requests at the time they were served and in the absence of any court order related to the AG and Governor (a point on which we appear to disagree), the court’s order yesterday specifically set Rule 26 deadlines for our clients. Pursuant to that order and the timelines set by Rule 26(d)(1), no discovery is appropriate until a Rule 26 conference has occurred, which has not happened. We were writing to confirm that, given this development, plaintiffs are withdrawing their Feb. 9 discovery requests against the AG and Governor. Please confirm this by 5 p.m. today. Thank you.

Kevin

KEVIN L. QUADE
Deputy Attorney General



Health, Education, and Welfare
Office of the Attorney General | Department of Justice | State of California
1300 I Street, Sacramento, California 95814
T. 916.210.7693

From: Paul Jonna <pjonna@limandri.com>
Sent: Thursday, February 22, 2024 11:54 AM
To: Kevin Quade <Kevin.Quade@doj.ca.gov>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>; Kathy Denworth <kdenworth@limandri.com>; Rebecca Oakley <roakley@limandri.com>
Subject: RE: Mirabelli - Court Order

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Kevin,

Thanks for your email. Just to quickly recap the timeline:

Your clients were served with the complaint on February 1.

We served the subject discovery requests on February 9. On that same day, we served you with our draft Joint Discovery Plan and asked for a further meet and confer call regarding Defendants Newsom and Bonta; we had already completed a Rule 26 conference with the other parties. We previously served Plaintiffs' Initial Disclosures on the other parties on January 22 – and we served them on you a few minutes ago.

On February 14, you sent us an email asking for a meet and confer call to discuss, among other things, “discovery topics pursuant to Rule 26.” We had the call on February 15, and made ourselves available to discuss discovery; your comments mostly focused on the need for a discovery stay.

Our position is that it was proper for us to serve discovery on your clients when we did; if you have authority suggesting otherwise, we would be happy to review it. Nonetheless, to avoid a discovery dispute, I suggest that we schedule another Rule 26 call for next week, and we can then reset the deadline for your clients to respond to the discovery requests accordingly. Please let us know your thoughts.

Paul M. Jonna | Partner
LIMANDRI & JONNA LLP | P.O. Box 9120 | Rancho Santa Fe, CA 92067
Tel: (858) 759-9930 | Direct: (858) 759-9133 | Fax: (858) 759-9938

pjonna@limandri.com | www.limandri.com



This communication (including any attachments) contains confidential information protected by the attorney-client privilege and/or attorney work-product privilege intended only for a specific person(s) or entity(ies) named as the recipient(s). If you are not the intended recipient(s), you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying, use or distribution of this communication, or the taking of any action based in it, is strictly prohibited by law. If you receive this transmission by error, please notify us by telephone immediately. Thank you.

From: Kevin Quade <Kevin.Quade@doj.ca.gov>
Sent: Thursday, February 22, 2024 10:33 AM
To: Paul Jonna <pjonna@limandri.com>
Cc: Charles Limandri <climandri@limandri.com>; Mark Myers <mmyers@limandri.com>; Jeffrey Trissell <jtrissell@limandri.com>; Milan Brandon <mbrandon@limandri.com>; Darrell Spence <Darrell.Spence@doj.ca.gov>; Emmanuelle Soichet <Emmanuelle.Soichet@doj.ca.gov>
Subject: Mirabelli - Court Order

Good morning Paul – We wanted to touch base with you and your team following the court’s order yesterday on various discovery-related deadlines. In our view, given the discovery limitations in Rule 26(d) (1), the order for the parties to meet and confer pursuant to Rule 26(f) no later than March 22, 2024, effectively invalidates the written discovery requests served on our clients back on February 9th. Such requests would not be viable until we’ve had the Rule 26(f) conference contemplated in the court’s order. We wanted to reach out to see if you read the implications of the court’s order in the same manner and, if not, to get your position. We’re happy to jump on a call today as well, if that’s easier for you. Thank you!

Kevin



KEVIN L. QUADE
Deputy Attorney General
Health, Education, and Welfare
Office of the Attorney General | Department of Justice | State of California
1300 I Street, Sacramento, California 95814
T. 916.210.7693

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

EXHIBIT 10

1 LEN GARFINKEL, State Bar No. 114815
General Counsel
2 PAUL GANT, State Bar No. 159844
Assistant General Counsel
3 VIRGINIA CALE, State Bar No. 258557
Deputy General Counsel
4 CHRISTOPHER MANDARANO, State Bar No. 263625
Deputy General Counsel
5 California Department of Education
1430 N Street, Room 5319
6 Sacramento, California 95814
Telephone: 916-319-0860
7 Facsimile: 916-322-2549
Email: cmandarano@cde.ca.gov
8 Attorneys for Defendants Tony Thurmond in his official capacity as State
Superintendent of Public Instruction and State Board of Education Members in their
9 official capacities

10 *(Defendants Tony Thurmond in his official capacity and State Board of Education*
11 *Members in their official capacity are Governmental Parties Exempt from the Provisions*
of FRCP 7.1)

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 ELIZABETH MIRABELLI, an individual,) Case No. 3:23-cv-0768-BEN-VET
and LORI ANN WEST, an individual,)
15)
16 Plaintiffs,) Defendant Tony Thurmond's
17 v.) Responses and Objections to Plaintiff
18 MARK OLSON, Superintendent of EUSD,) Mirabelli's Interrogatories to the State
et al.,) Defendants, Set One.
19)
20 Defendants.)
21
22
23
24
25
26
27
28

1 PROPOUNDING PARTIES: Plaintiff ELIZABETH MIRABELLI

2 RESPONDING PARTIES: Defendant TONY THURMOND

3 SET NO.: One (1)

4 Respondent State Superintendent of Public Instruction (“Respondent”) hereby
5 submits his responses to Plaintiff Elizabeth Mirabelli’s Interrogatories to the State
6 Defendants, Set One, pursuant to Federal Rule of Civil Procedure 33.

7 **GENERAL OBJECTIONS**

8 All general objections are incorporated into each specific response below as if
9 they were fully repeated therein, even if not specifically referred to in a particular
10 response. The enumeration of particular general objections and responses to any specific
11 Interrogatory is not intended to be exclusive and does not limit the applicability of each
12 general objection to each Interrogatory. Any objection or lack of objection to any of
13 Plaintiff’s Interrogatories is not, and shall not be deemed an admission that Respondent
14 has the information requested.

15 Respondent objects that Plaintiff’s Interrogatories are vague, overly broad, unduly
16 burdensome, and encompass information not relevant in the present litigation.

17 Respondent objects to Plaintiff’s Interrogatories as unduly burdensome to the extent they
18 seek information that is equally available to Plaintiffs. Respondent objects to Plaintiff’s
19 Interrogatories on the basis of relevancy to the extent they seek information that is up to
20 10 years old. Some Interrogatories may seek information related to documents that, due
21 to their age, and/or the loss of employees, were subject to destruction per the California
22 Department of Education (CDE)’s records retention policy.

23 Respondent objects to Plaintiff’s Interrogatories to the extent they seek
24 information that is protected from disclosure by the attorney-client, official information,
25 and deliberative process privileges, the right to privacy, the attorney-work product
26 doctrine, and the common interest/joint defense privilege.

27 Subject to and without waiving any of the above objections, or any objections
28 enumerated below, Respondent responds as follows:

1 **Response to Interrogatory No. 2:**

2 Respondent objects to this interrogatory to the extent that it seeks information
3 which is protected by the attorney client and attorney work-product privileges.
4 Respondent further objects to this interrogatory on the grounds that it is compound as
5 phrased, as it seeks information about the creation of two distinct documents, a legal
6 advisory and Frequently Asked Questions. Respondent further objects to this
7 interrogatory to the extent that it seeks information protected by the deliberative process
8 privilege. Subject to such objections, and not waiving the limits on interrogatories under
9 Federal Rule 33(a)(1), Respondent answers as follows:

10 CDE issued the advisory and FAQ under the following legal authority:

11 California Constitution, Art. 1, Sec. 1

12 Education Code Sections 210.7, 220, 221.5, 234.1

13 Penal Code section 422.55

14 42 U.S.C. 2000d-2000e-17, 2000h-2000h-6

15 Title 5, California Code of Regulations, section 4900, et seq.

16 **Interrogatory No. 3:**

17 Identify the specific PERSONS involved in originally drafting, or subsequently
18 reviewing and editing the 2016 LEGAL ADVISORY ON GENDER IDENTITY and
19 accompanying FAQ PAGE ON GENDER IDENTITY.

20 **Response to Interrogatory No. 3:**

21 Respondent objects to this interrogatory to the extent that it seeks information
22 which is protected by the attorney client and attorney work-product privileges.
23 Respondent further objects to this interrogatory on the grounds that it is compound as
24 phrased, as it seeks information about the creation of two distinct documents, a legal
25 advisory and Frequently Asked Questions. Respondent further objects to this
26 interrogatory to the extent that it seeks information protected by the deliberative process
27 privilege. Respondent further objects to this interrogatory on the grounds that it is
28 burdensome, overbroad, and harassing, as it seeks information which is more than 8

1 years old about persons acting in their role as civil servants and employees of the CDE.
2 Respondent further objects to this request on the grounds that it seeks information
3 which is not relevant, and which is not likely to lead to the discovery of admissible
4 evidence, as the individuals who may have worked on the advisory and FAQs did so as
5 employees of the CDE and on behalf of the CDE. Subject to such objections, and not
6 waiving the limits on interrogatories under Federal Rule 33(a)(1), Respondent answers
7 as follows:

8 Respondent has not been able to confirm the names of the actual drafters or
9 editors of the initial advisory or FAQs, and no current non-attorney employees of the
10 CDE aided in the drafting, editing or reviewing of the advisory and FAQs.

11 **Interrogatory No. 4:**

12 For each PERSON identified in response to Interrogatory No. 3, identify the dates
13 of their involvement, their specific role(s) within the California Department of
14 Education, and their specific role(s) with respect to the webpages.

15 **Response to Interrogatory No. 4:**

16 Respondent objects to this interrogatory to the extent that it seeks information
17 which is protected by the attorney client and attorney work-product privileges.
18 Respondent further objects to this interrogatory on the grounds that it is compound as
19 phrased, as it seeks information about the creation of two distinct documents, a legal
20 advisory and Frequently Asked Questions. Respondent further objects to this
21 interrogatory to the extent that it seeks information protected by the deliberative process
22 privilege. Respondent further objects to this interrogatory on the grounds that it is
23 burdensome, overbroad, and harassing, as it seeks information which is more than 8
24 years old about persons acting in their role as civil servants and employees of the CDE.
25 Respondent further objects to this request on the grounds that it seeks information
26 which is not relevant and which is not likely to lead to the discovery of admissible
27 evidence, as the individuals who may have worked on the advisory and FAQs did so as
28 employees of the CDE and on behalf of the CDE. Subject to such objections, and not

1 waiving the limits on interrogatories under Federal Rule 33(a)(1), Respondent answers
2 as follows:

3 Respondent has not been able to confirm the names of the actual drafters or
4 editors of the initial advisory or FAQs, and no current non-attorney employees of the
5 CDE aided in the drafting, editing or reviewing of the advisory and FAQs.

6 **Interrogatory No. 5:**

7 Describe all legal authority, including case law, undergirding the following
8 statement in FAQ PAGE ON GENDER IDENTITY:

9 With rare exceptions, schools are required to respect the limitations
10 that a student places on the disclosure of their transgender status, including
11 not sharing that information with the student’s parents. In those very rare
12 circumstances where a school believes there is a specific and compelling
13 “need to know,” the school should inform the student that the school
intends to disclose the student’s transgender status, giving the student the
opportunity to make that disclosure her or himself....
Schools are not permitted to disclose private student information to other
students or the parents of those students.

14 **Response to Interrogatory No. 5:**

15 Respondent objects to this interrogatory on the grounds that it seeks information
16 protected by the attorney-client and attorney work product privileges, including in its
17 demand to provide all legal authority supporting several statements from the FAQ.
18 Respondent further objects to this interrogatory on the grounds that it seeks information
19 protected by the deliberative process privilege. Respondent further objects to this
20 interrogatory on the grounds that it is vague and ambiguous as phrased, including as to
21 the use of the term “undergirding” and the reference in the interrogatory to a single
22 statement, while including an incomplete capture of part of a response in the FAQ that
23 includes multiple statements. Respondent further objects to this interrogatory on the
24 grounds that it is burdensome, overbroad, and harassing as phrased, as it purports to
25 require Respondent to identify any and all legal authority which supports the FAQ,
26 which is an improper use of interrogatories and is not likely to lead to the discovery of
27 admissible evidence.

28 ///

1 **Interrogatory No. 6:**

2 Describe as many circumstances as possible that would constitute “a specific and
3 compelling ‘need to know’” warranting disclosure of a student’s transgender or gender
4 diverse gender identity to his parents, over his objection, as stated in the FAQ ON
5 GENDER IDENTITY.

6 **Response to Interrogatory No. 6:**

7 Respondent objects to this interrogatory to the extent that it seeks information
8 protected by the attorney-client and attorney work product privileges. Respondent
9 further objects to this interrogatory on the grounds that it presents an improper
10 hypothetical without context or applicability to the issues in this case, and is therefore
11 not likely to lead to the discovery of admissible information. Respondent further objects
12 to this interrogatory on the grounds that it is burdensome and harassing. Respondent
13 further objects to this interrogatory to the extent that it seeks expert testimony, as expert
14 disclosures have not yet occurred, and Respondent reserves the right to update his
15 response based on expert opinion. Subject to such objections, Respondent answers as
16 follows:

17 Whether there is a compelling “need to know” would necessarily vary based on
18 all of the factors present in a specific situation. It is not possible to speculate about
19 every potential scenario where it might be warranted to disclose a pupil’s gender
20 nonconforming status to a parent over the pupil’s objection. Specific facts, which have
21 not been presented in this interrogatory, would need to be provided to determine
22 whether a given scenario would support the disclosure of a pupil’s gender
23 nonconforming identity to the pupil’s parents over the pupil’s objection.

24 **Interrogatory No. 7:**

25 If YOU contend that revealing a student’s transgender or gender diverse gender
26 identity to his parents, over his objection, is harassment, please explain how doing so is
27 harassing.

28 ///

1 **Response to Interrogatory No. 7:**

2 Respondents object to this interrogatory on the grounds that it is vague and
3 ambiguous as phrased, as it presents an incomplete hypothetical. Respondent further
4 objects to this interrogatory to the extent that it seeks expert testimony, as expert
5 disclosures have not yet occurred, and Respondent reserves the right to update his
6 response based on expert opinion. Subject to such objections, Respondent answers as
7 follows:

8 A teacher who “outs” a pupil, over that pupil’s objection, disregards the wishes of
9 that pupil, violates that pupil’s trust and privacy, and creates friction for that pupil both
10 at school and at home. The treatment, and resulting harm to the pupil, are all the result
11 of the teacher’s actions. The level of harassment would vary depending on the
12 circumstances. This is an example, and not the only potential manner in which a teacher
13 violating a pupil’s privacy and disclosing their gender nonconforming status could be
14 harassment.

15 **Interrogatory No. 8:**

16 If YOU contend that revealing a student’s transgender or gender diverse gender
17 identity to his parents, over his objection, is discrimination, please explain how doing so
18 is discriminatory.

19 **Response to Interrogatory No. 8:**

20 Respondents object to this interrogatory on the grounds that it is vague and
21 ambiguous as phrased, as it presents an incomplete hypothetical. Respondent further
22 objects to this interrogatory to the extent that it seeks expert testimony, as expert
23 disclosures have not yet occurred, and Respondent reserves the right to update his
24 response based on expert opinion. Subject to such objections, and to the extent
25 Respondent can understand this request, Respondent answers as follows:

26 A teacher “outing” a gender nonconforming pupil to their parents is an action that
27 is undertaken because the pupil is gender nonconforming, meaning the pupil is being
28 singled out and treated differently because of their gender identity or expression, which

1 is a protected characteristic. This is an example, and not the only potential manner in
2 which a teacher violating a pupil’s privacy and disclosing their gender nonconforming
3 status could be discriminatory.

4 **Interrogatory No. 9:**

5 Please explain how a student has a legitimate expectation of privacy regarding his
6 transgender or gender diverse gender identity when attending a school that has a policy
7 that requires all students and teachers to acknowledge and affirm his transgender or
8 gender diverse gender identity.

9 **Response to Interrogatory No. 9:**

10 People do not lose their privacy rights simply by virtue of sharing something
11 private with certain other people and/or in certain contexts.

12 **Interrogatory No. 10:**

13 Please explain whether the California Department of Education has the authority
14 to withhold state education funds from a school district that adopts a policy to disclose
15 students’ gender identity to their parents.

16 **Response to Interrogatory No. 10:**

17 Respondent objects to this interrogatory on the grounds that it is vague and
18 ambiguous as phrased, as it presents an incomplete hypothetical and requires the
19 Respondent to make assumptions of facts not presented to respond. Respondent further
20 objects to this interrogatory on the grounds that it is not relevant to the claims or
21 defenses in the case and not likely to lead to the discovery of admissible evidence, as
22 there is no claim here that a school district has implemented a forced disclosure policy.
23 Subject to such objections, Respondent answers as follows:

24 The CDE does not have the authority to withhold funds simply because a school
25 district has adopted “a policy to disclose students’ gender identity to their parents.”

26 **Interrogatory No. 11:**

27 If YOU contend that informing parents of their child’s gender identity and using
28 preferred names and pronouns is not speech, please explain why.

1 **Response to Interrogatory No. 14:**

2 Respondent object to this interrogatory on the grounds that it is vague and
3 ambiguous as phrased, as it presents an incomplete hypothetical. Respondent further
4 objects to this interrogatory on the grounds that it seeks a contention of pure law.
5 Respondent further objects to this interrogatory on the grounds that it seeks information
6 protected by the attorney client and work product privileges.

7 **Interrogatory No. 15:**

8 Please explain whether the California Department of Education or any of its
9 officials have had any role, and if so the nature of that role, in the lawsuit People v.
10 Chino Valley Unified School Dist., No. CIV SB 2317301 (Cal. Super. Ct., San
11 Bernardino County, Aug. 28, 2023).

12 **Response to Interrogatory No. 15:**

13 Respondent objects to this interrogatory to the extent that it seeks information
14 protected by the attorney client work product privileges through a Common
15 Interest/Joint Defense agreement between parties. Respondent further objects to this
16 interrogatory on the grounds that it seeks information which is not relevant to the claims
17 and defenses at issue in this case and is not likely to lead to the discovery of admissible
18 evidence. Respondent further objects to this interrogatory on the grounds that it is vague
19 and ambiguous as to the use of the word “role” and what is meant in the context of the
20 interrogatory. Subject to such objections, and to the extent Respondent can understand
21 this request, Respondent answers as follows:

22 The CDE has not had a “role” in the litigation of People v. Chino Valley Unified
23 School District. The CDE did seek leave to file, and filed, an amicus brief in the case.

24 **Interrogatory No. 16:**

25 Please explain whether the California Department of Education or any of its
26 officials have had any role, and if so the nature of that role, in the lawsuit Regino v.
27 Staley, No. 2:23-cv-32 (E.D. Cal., Jan. 6, 2023).

28 ///

Response to Interrogatory No. 16:

Respondent objects to this interrogatory on the grounds that it seeks information which is not relevant to the claims and defenses at issue in this case and is not likely to lead to the discovery of admissible evidence. Respondent further objects to this interrogatory on the grounds that it is vague and ambiguous as to the use of the word “role” and what is meant in the context of the interrogatory. Subject to such objections, and to the extent Respondent can understand this request, Respondent answers as follows:

The CDE has not had any “role” in the litigation, but the CDE did file an Amicus Curiae Brief in support of affirmance of the District Court’s decision in the pending appeal before the 9th Circuit Court of Appeals.

Interrogatory No. 17:

Please identify any and all investigations that the California Department of Education has initiated or concluded, since on January 1, 2020, concerning any local education agency’s adoption of policies relating in any way to gender identity.

Response to Interrogatory No. 17:

Respondent objects to this interrogatory on the grounds that it seeks information protected by the deliberative process privilege, including information about currently pending investigations, and to the extent that it seeks information protected by the attorney client and work product privileges. Subject to such objections, Respondent answers as follows:

Rocklin Unified School District, Education Equity Uniform Complaint Procedure, case number 2023-0202.

Dated: March 11, 2024

LEN GARFINKEL
General Counsel
PAUL GANT
Assistant General Counsel
By: Virginia Cale Digitally signed by Virginia Cale
Date: 2024.03.11 10:13:22
-07'00'
VIRGINIA CALE
Deputy General Counsel
Attorney for State Education Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Mary Nicely, declare that I am the Chief Deputy of Public Instruction for the California Department of Education (CDE). I am authorized to make this verification on behalf of Tony Thurmond, in his official capacity as State Superintendent of Public Instruction. I have read the foregoing DEFENDANT TONY THURMOND'S RESPONSES AND OBJECTIONS TO PLAINTIFF MIRABELLI'S INTERROGATORIES TO THE STATE DEFENDANTS, SET ONE. I am informed and believe, and on that basis allege, that the matters stated in them are true.

I declare under penalty of perjury of the laws of the State of California that the above is true and correct, and that this verification is executed on this 6th day of March, 2024 at Sacramento, California.



MARY NICELY

EXHIBIT 11

1 LEN GARFINKEL, State Bar No. 114815
General Counsel
2 PAUL GANT, State Bar No. 159844
Assistant General Counsel
3 VIRGINIA CALE, State Bar No. 258557
Deputy General Counsel
4 CHRISTOPHER MANDARANO, State Bar No. 263625
Deputy General Counsel
5 California Department of Education
1430 N Street, Room 5319
6 Sacramento, California 95814
Telephone: 916-319-0860
7 Facsimile: 916-322-2549
Email: cmandarano@cde.ca.gov
8 Attorneys for Defendants Tony Thurmond in his official capacity as State
Superintendent of Public Instruction and State Board of Education Members in their
9 official capacities

10 *(Defendants Tony Thurmond in his official capacity and State Board of Education*
11 *Members in their official capacity are Governmental Parties Exempt from the Provisions*
of FRCP 7.1)

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 ELIZABETH MIRABELLI, an individual,) Case No. 3:23-cv-0768-BEN-VET
and LORI ANN WEST, an individual,)
15)
16 Plaintiffs,) Defendants State Board of Education
17 v.) Members' Responses and Objections
18 MARK OLSON, Superintendent of EUSD,) to Plaintiff Mirabelli's Interrogatories
et al.,) to the State Defendants, Set One.
19)
20 Defendants.)
21
22
23
24
25
26
27
28

1 Respondents object to Plaintiff’s Interrogatories on the basis of relevancy to the extent
2 they seek information that is up to 10 years old, and any information on events that
3 occurred before Respondents were appointed to their roles on the SBE. Respondents
4 object to Plaintiff’s Interrogatories to the extent they seek information that is protected
5 from disclosure by the attorney-client, official information, and deliberative process
6 privileges, work product doctrine, and the right to privacy.

7 Subject to and without waiving any of the above objections, or any objections
8 enumerated below, Respondents respond as follows.

9 **SPECIFIC RESPONSES AND OBJECTIONS**

10 **Interrogatory No. 1:**

11 Describe why the California Department of Education issued the 2016 LEGAL
12 ADVISORY ON GENDER IDENTITY and accompanying FAQ PAGE ON GENDER
13 IDENTITY.

14 **Response to Interrogatory No. 1:**

15 Respondents object to this Interrogatory to the extent it seeks information outside
16 of the possession, custody, and control of the SBE. Respondents object to this
17 interrogatory on the grounds that it burdensome, harassing, and improper, as it asks
18 Respondents for information about which they have no knowledge, personal or as a
19 result of their official positions as members of the SBE, as the SBE is a separate entity
20 from the CDE, and why the CDE did or did not do something is not within the
21 knowledge of the SBE or its members. Respondents further object to this Interrogatory
22 to the extent it seeks information that is protected from disclosure by the attorney-client,
23 official information, and deliberative process privileges, and the work product doctrine.
24 Respondents further object to this interrogatory on the grounds that it is compound as
25 phrased, as it seeks information about the creation of two distinct documents, a legal
26 advisory and Frequently Asked Questions. Respondents further object to this
27 interrogatory on the grounds that it is burdensome and harassing, as it seeks information
28 from between 8 and 10 years ago. Respondents further object to this interrogatory to

1 the extent that it seeks information protected by the deliberative process privilege.
2 Respondents further object to this interrogatory on the grounds that it contains multiple
3 discrete subparts and is compound because it concerns two different subjects: CDE’s
4 advisory and CDE’s FAQs. Subject to such objections, and without waiving the
5 numerical limits on interrogatories under Federal Rule 33(a)(1), Respondents answer as
6 follows:

7 Respondents, appointed to the SBE, lack knowledge of the reasons behind the
8 decision to draft documents, which were drafted and maintained by a separate entity, the
9 CDE, and which were drafted and posted on the CDE’s webpage before any of the
10 Respondents were appointed to their roles on the SBE and none of Respondents are
11 employees or officers of the CDE.

12 **Interrogatory No. 2:**

13 Describe under what legal authority the California Department of Education
14 issued the 2016 LEGAL ADVISORY ON GENDER IDENTITY and accompanying
15 FAQ PAGE ON GENDER IDENTITY.

16 **Response to Interrogatory No. 2:**

17 Respondents object to this Interrogatory to the extent it seeks information outside
18 of the possession, custody, and control of the SBE. Respondents object to this
19 interrogatory on the grounds that it burdensome, harassing, and improper, as it asks
20 Respondents for information about which they have no knowledge, personal or as a
21 result of their official positions as members of the SBE, as the SBE is a separate entity
22 from the CDE, and why the CDE did or did not do something is not within the
23 knowledge of the SBE or its members. Respondents further object to this Interrogatory
24 to the extent it seeks information that is protected from disclosure by the attorney-client,
25 official information, and deliberative process privileges, and the work product doctrine.
26 Respondents further object to this interrogatory on the grounds that it is compound as
27 phrased, as it seeks information about the creation of two distinct documents, a legal
28 advisory and Frequently Asked Questions. Respondents further object to this

1 interrogatory on the grounds that it contains multiple discrete subparts and is compound
2 because it concerns two different subjects: CDE’s advisory and CDE’s FAQs. Subject
3 to such objections, and without waiving the numerical limits on interrogatories under
4 Federal Rule 33(a)(1), Respondents answer as follows:

5 Respondents, appointed to the SBE, lack knowledge of the reasons behind the
6 decision to draft documents, which were drafted and maintained by a separate entity, the
7 CDE, and which were drafted and posted on the CDE’s webpage before any of the
8 Respondents were appointed to their roles on the SBE and none of Respondents are
9 employees or officers of the CDE.

10 **Interrogatory No. 3:**

11 Identify the specific PERSONS involved in originally drafting, or subsequently
12 reviewing and editing the 2016 LEGAL ADVISORY ON GENDER IDENTITY and
13 accompanying FAQ PAGE ON GENDER IDENTITY.

14 **Response to Interrogatory No. 3:**

15 Respondents object to this Interrogatory to the extent it seeks information outside
16 of the possession, custody, and control of the SBE. Respondents object to this
17 interrogatory on the grounds that it burdensome, harassing, and improper, as it asks
18 Respondents for information about which they have no knowledge, personal or as a
19 result of their official positions as members of the SBE, as the SBE is a separate entity
20 from the CDE, and why the CDE did or did not do something is not within the
21 knowledge of the SBE or its members. In addition, it is burdensome and harassing as it
22 asks for information which is at least 8 years old. Respondents further object to this
23 Interrogatory to the extent it seeks information that is protected from disclosure by the
24 attorney-client, official information, and deliberative process privileges, and the work
25 product doctrine. Respondents further object to this interrogatory on the grounds that it
26 is compound as phrased, as it seeks information about the creation of two distinct
27 documents, a legal advisory and Frequently Asked Questions. Respondents further
28 object to this request on the grounds that it is seeks information which is not relevant,

1 and which is not likely to lead to the discovery of admissible evidence, as the
2 individuals who may have worked on the advisory and FAQs did so as employees of the
3 CDE and on behalf of the CDE. Respondents further object to this interrogatory on the
4 grounds that it contains multiple discrete subparts and is compound because it concerns
5 two different subjects: CDE’s advisory and CDE’s FAQs. Subject to such objections,
6 and without waiving the numerical limits on interrogatories under Federal Rule
7 33(a)(1), Respondents answer as follows:

8 Respondents, appointed to the SBE, lack knowledge of the reasons behind the
9 decision to draft documents, which were drafted and maintained by a separate entity, the
10 CDE, and which were drafted and posted on the CDE’s webpage before any of the
11 Respondents were appointed to their roles on the SBE and none of Respondents are
12 employees or officers of the CDE.

13 **Interrogatory No. 4:**

14 For each PERSON identified in response to Interrogatory No. 3, identify the dates
15 of their involvement, their specific role(s) within the California Department of
16 Education, and their specific role(s) with respect to the webpages.

17 **Response to Interrogatory No. 4:**

18 Respondents object to this Interrogatory to the extent it seeks information outside
19 of the possession, custody, and control of the SBE. Respondents object to this
20 interrogatory on the grounds that it burdensome, harassing, and improper, as it asks
21 Respondents for information about which they have no knowledge, personal or as a
22 result of their official positions as members of the SBE, as the SBE is a separate entity
23 from the CDE, and why the CDE did or did not do something is not within the
24 knowledge of the SBE or its members. In addition, it is burdensome and harassing as it
25 asks for information which is at least 8 years old. Respondents further object to this
26 Interrogatory to the extent it seeks information that is protected from disclosure by the
27 attorney-client, official information, and deliberative process privileges, and the work
28 product doctrine. Respondents further object to this interrogatory on the grounds that it

1 is compound as phrased, as it seeks information about the creation of two distinct
2 documents, a legal advisory and Frequently Asked Questions. Respondents further
3 object to this request on the grounds that it is seeks information which is not relevant,
4 and which is not likely to lead to the discovery of admissible evidence, as the
5 individuals who may have worked on the advisory and FAQs did so as employees of the
6 CDE and on behalf of the CDE. Subject to such objections, and without waiving the
7 numerical limits on interrogatories under Federal Rule 33(a)(1), Respondents answer as
8 follows:

9 Not applicable based on Respondents' Answer to Interrogatory No. 3.

10 **Interrogatory No. 5:**

11 Describe all legal authority, including case law, undergirding the following
12 statement in FAQ PAGE ON GENDER IDENTITY:

13 With rare exceptions, schools are required to respect the limitations
14 that a student places on the disclosure of their transgender status, including
15 not sharing that information with the student's parents. In those very rare
16 circumstances where a school believes there is a specific and compelling
17 "need to know," the school should inform the student that the school
18 intends to disclose the student's transgender status, giving the student the
19 opportunity to make that disclosure her or himself....
20 Schools are not permitted to disclose private student information to other
21 students or the parents of those students.

18 **Response to Interrogatory No. 5:**

19 Respondents object to this Interrogatory to the extent it seeks information outside
20 of the possession, custody, and control of the SBE. Respondents object to this
21 interrogatory on the grounds that it is burdensome and harassing, as Respondents and
22 SBE had no role in the drafting of the CDE FAQ, which was drafted by the CDE and
23 maintained on the CDE website years before Respondents' appointments to the SBE.
24 Respondents further object to this Interrogatory to the extent it seeks information that is
25 protected from disclosure by the attorney-client, official information, and deliberative
26 process privileges, and the work product doctrine. Respondents further object to this
27 interrogatory on the grounds that it is vague and ambiguous as phrased, including as to
28 the use of the term "undergirding" and the reference in the interrogatory to a single

1 statement, while including an incomplete portion of a response in the FAQ that includes
2 multiple statements. Respondents further object to this interrogatory on the grounds
3 that it is burdensome, overbroad, and harassing as phrased, as it purports to require
4 Respondents to identify any and all legal authority which supports the CDE FAQ,
5 which is an improper use of interrogatories and is not likely to lead to the discovery of
6 admissible evidence.

7 **Interrogatory No. 6:**

8 Describe as many circumstances as possible that would constitute “a specific and
9 compelling ‘need to know’” warranting disclosure of a student’s transgender or gender
10 diverse gender identity to his parents, over his objection, as stated in the FAQ ON
11 GENDER IDENTITY.

12 **Response to Interrogatory No. 6:**

13 Respondents object to this Interrogatory to the extent it seeks information outside
14 of the possession, custody, and control of the SBE. Respondents object to this
15 interrogatory on the grounds that it is burdensome and harassing, as Respondents and
16 SBE had no role in the drafting of the CDE FAQ, which was drafted by the CDE and
17 maintained on the CDE website years before Respondents’ appointments to the SBE.
18 Respondents further object to this Interrogatory to the extent it seeks information that is
19 protected from disclosure by the attorney-client, official information, and deliberative
20 process privileges, and the work product doctrine. Respondents further object to this
21 interrogatory on the grounds that it presents an improper hypothetical without context or
22 applicability to the issues in this case and is therefore not likely to lead to the discovery
23 of admissible information. Respondents further object to this interrogatory on the
24 grounds that it is burdensome and harassing as phrased. Respondents further object to
25 this interrogatory to the extent that it seeks expert testimony, as expert disclosures have
26 not yet occurred, and Respondents reserve the right to supplement their response based
27 on expert opinion.

28 ///

1 **Interrogatory No. 7:**

2 If YOU contend that revealing a student’s transgender or gender diverse gender
3 identity to his parents, over his objection, is harassment, please explain how doing so is
4 harassing.

5 **Response to Interrogatory No. 7:**

6 Respondents object to this Interrogatory to the extent it seeks information outside
7 of the possession, custody, and control of the SBE. Respondents object to this
8 interrogatory on the grounds that it is burdensome and harassing when directed at these
9 Respondents, who have been sued in their official capacities as members of the SBE.
10 Respondents further object to this interrogatory on the grounds that it is vague and
11 ambiguous as phrased, as it presents an incomplete hypothetical. Respondents further
12 object to this Interrogatory to the extent it seeks information that is protected from
13 disclosure by the attorney-client, official information, and deliberative process
14 privileges, and the work product doctrine. Respondents further object to this
15 interrogatory to the extent that it seeks expert testimony, as expert disclosures have not
16 yet occurred, and Respondents reserve the right to supplement their response based on
17 expert opinion.

18 **Interrogatory No. 8:**

19 If YOU contend that revealing a student’s transgender or gender diverse gender
20 identity to his parents, over his objection, is discrimination, please explain how doing so
21 is discriminatory.

22 **Response to Interrogatory No. 8:**

23 Respondents object to this Interrogatory to the extent it seeks information outside
24 of the possession, custody, and control of the SBE. Respondents object to this
25 interrogatory on the grounds that it is burdensome and harassing when directed at these
26 Respondents, who have been sued in their official capacities as members of the SBE.
27 Respondents further object to this Interrogatory to the extent it seeks information that is
28 protected from disclosure by the attorney-client, official information, and deliberative

1 process privileges, and the work product doctrine. Respondents further object to this
2 interrogatory on the grounds that it is vague and ambiguous as phrased, as it presents an
3 incomplete hypothetical. Respondents further object to this interrogatory to the extent
4 that it seeks expert testimony, as expert disclosures have not yet occurred, and
5 Respondents reserve the right to supplement their response based on expert opinion.

6 **Interrogatory No. 9:**

7 Please explain how a student has a legitimate expectation of privacy regarding his
8 transgender or gender diverse gender identity when attending a school that has a policy
9 that requires all students and teachers to acknowledge and affirm his transgender or
10 gender diverse gender identity.

11 **Response to Interrogatory No. 9:**

12 Respondents object to this Interrogatory to the extent it seeks information outside
13 of the possession, custody, and control of the SBE. Respondents object to this
14 interrogatory on the grounds that it is burdensome and harassing when directed at these
15 Respondents, who have been sued in their official capacities as members of the SBE.
16 Respondents further object to this interrogatory on the grounds that it is vague and
17 ambiguous as phrased, as it presents an incomplete hypothetical. Respondents further
18 object to this Interrogatory to the extent it seeks information that is protected from
19 disclosure by the attorney-client, official information, and deliberative process
20 privileges, and the work product doctrine. Respondents further object to this
21 interrogatory to the extent that it seeks expert testimony, as expert disclosures have not
22 yet occurred, and Respondents reserve the right to supplement their response based on
23 expert opinion.

24 **Interrogatory No. 10:**

25 Please explain whether the California Department of Education has the authority
26 to withhold state education funds from a school district that adopts a policy to disclose
27 students' gender identity to their parents.

28 ///

1 **Response to Interrogatory No. 10:**

2 Respondents object to this Interrogatory to the extent it seeks information outside
3 of the possession, custody, and control of the SBE. Respondents object to this
4 interrogatory on the grounds that it is burdensome and harassing when it concerns the
5 authority of a separate entity, the CDE, but is directed at Respondents, none of whom
6 are employees or officers of the CDE, and were instead appointed to the SBE, which is
7 a separate entity from the CDE. Respondents further object to this Interrogatory to the
8 extent it seeks information that is protected from disclosure by the attorney-client,
9 official information, and deliberative process privileges, and the work product doctrine.
10 Respondents further object to this interrogatory on the grounds that it is vague and
11 ambiguous as phrased, as it presents an incomplete hypothetical and requires the
12 Respondent to make assumptions of facts not presented to respond. Respondents
13 further object to this interrogatory on the grounds that it is not relevant to the claims or
14 defenses in the case and not likely to lead to the discovery of admissible evidence, as
15 there is no claim here that a school district has implemented a forced disclosure policy.

16 **Interrogatory No. 11:**

17 If YOU contend that informing parents of their child’s gender identity and using
18 preferred names and pronouns is not speech, please explain why.

19 **Response to Interrogatory No. 11:**

20 Respondents object to this Interrogatory to the extent it seeks information outside
21 of the possession, custody, and control of the SBE. Respondents object to this
22 interrogatory on the grounds that it is burdensome and harassing when directed at these
23 Respondents, who have been sued in their official capacities as members of the SBE.
24 Respondents further object to this interrogatory on the grounds that it is vague and
25 ambiguous as well as overbroad as phrased. Respondents further object to this
26 interrogatory on the grounds that it contains multiple discrete subparts, as it attempts to
27 lump three distinct subjects—sharing private information with parents, using a preferred
28 name, and using a preferred pronoun—into a single contention interrogatory which

1 makes it impossible to respond. Respondents further object to this interrogatory on the
2 grounds that it seeks a contention of pure law. Respondents further object to this
3 Interrogatory to the extent it seeks information that is protected from disclosure by the
4 attorney-client, official information, and deliberative process privileges, and the work
5 product doctrine. Respondents further object to this interrogatory on the grounds that it
6 is vague and ambiguous as to the term “YOU” when applied to these Respondents.
7 Respondents further object to this interrogatory on the grounds that it seeks information
8 protected by the attorney client and work product privileges.

9 **Interrogatory No. 12:**

10 If YOU contend that the topic of gender identity is not a matter of public concern,
11 please explain why.

12 **Response to Interrogatory No. 12:**

13 Respondents object to this Interrogatory to the extent it seeks information outside
14 of the possession, custody, and control of the SBE. Respondents object to this
15 interrogatory on the grounds that it is burdensome and harassing when directed at these
16 Respondents, who have been sued in their official capacities as members of the SBE.
17 Respondents further object to this Interrogatory to the extent it seeks information that is
18 protected from disclosure by the attorney-client, official information, and deliberative
19 process privileges, and the work product doctrine. Respondents further object to this
20 interrogatory on the grounds that it is vague and ambiguous as to the term “YOU” when
21 applied to these Respondents.

22 **Interrogatory No. 13:**

23 If YOU contend that withholding a student’s gender identity from his or her
24 parents, absent express permission, satisfies strict scrutiny, please explain why.

25 **Response to Interrogatory No. 13:**

26 Respondents object to this Interrogatory to the extent it seeks information outside
27 of the possession, custody, and control of the SBE. Respondents object to this
28 interrogatory on the grounds that it is burdensome and harassing when directed at these

1 Respondents, who have been sued in their official capacities as members of the SBE.
2 Respondents further object to this interrogatory on the grounds that it is vague and
3 ambiguous as phrased, as it presents an incomplete hypothetical. Respondents further
4 object to this Interrogatory to the extent it seeks information that is protected from
5 disclosure by the attorney-client, official information, and deliberative process
6 privileges, and the work product doctrine. Respondents further object to this
7 interrogatory on the grounds that it is vague and ambiguous as to the term “YOU” when
8 applied to these Respondents.

9 **Interrogatory No. 14:**

10 If YOU contend that withholding a student’s gender identity from his or her
11 parents, absent express permission, does not violate parental rights under the Fourteenth
12 Amendment, please explain why.

13 **Response to Interrogatory No. 14:**

14 Respondents object to this Interrogatory to the extent it seeks information outside
15 of the possession, custody, and control of the SBE. Respondents object to this
16 interrogatory on the grounds that it is burdensome and harassing when directed at these
17 Respondents, who have been sued in their official capacities as members of the SBE.
18 Respondents further object to this interrogatory on the grounds that it is vague and
19 ambiguous as phrased, as it presents an incomplete hypothetical. Respondents further
20 object to this interrogatory on the grounds that it seeks a contention of pure law.
21 Respondents further object to this Interrogatory to the extent it seeks information that is
22 protected from disclosure by the attorney-client, official information, and deliberative
23 process privileges, and the work product doctrine. Respondents further object to this
24 interrogatory on the grounds that it is vague and ambiguous as to the term “YOU” when
25 applied to these Respondents.

26 **Interrogatory No. 15:**

27 Please explain whether the California Department of Education or any of its
28 officials have had any role, and if so the nature of that role, in the lawsuit People v.

1 Chino Valley Unified School Dist., No. CIV SB 2317301 (Cal. Super. Ct., San
2 Bernardino County, Aug. 28, 2023).

3 **Response to Interrogatory No. 15:**

4 Respondents object to this Interrogatory to the extent it seeks information outside
5 of the possession, custody, and control of the SBE. Respondents object to this
6 interrogatory on the grounds that it is burdensome and harassing when it concerns the
7 role of a separate entity, the CDE, but is directed to Respondents, none of whom are
8 employees or officers of the CDE, and were instead appointed to the SBE, which is a
9 separate entity from the CDE. Respondents further object to this Interrogatory to the
10 extent it seeks information that is protected from disclosure by the attorney-client,
11 official information, and deliberative process privileges, and the work product doctrine.
12 Respondents further object to this interrogatory on the grounds that it seeks information
13 which is not relevant to the claims and defenses at issue in this case and is not likely to
14 lead to the discovery of admissible evidence. Respondents further object to this
15 interrogatory on the grounds that it is vague and ambiguous as to the use of the word
16 “role” and what is meant in the context of the interrogatory.

17 **Interrogatory No. 16:**

18 Please explain whether the California Department of Education or any of its
19 officials have had any role, and if so the nature of that role, in the lawsuit Regino v.
20 Staley, No. 2:23-cv-32 (E.D. Cal., Jan. 6, 2023).

21 **Response to Interrogatory No. 16:**

22 Respondents object to this Interrogatory to the extent it seeks information outside
23 of the possession, custody, and control of the SBE. Respondents object to this
24 interrogatory on the grounds that it is burdensome and harassing when it concerns the
25 role of a separate entity, the CDE, but is directed to Respondents, none of whom are
26 employees or officers of the CDE, and were instead appointed to the SBE, which is a
27 separate entity from the CDE. Respondents further object to this Interrogatory to the
28 extent it seeks information that is protected from disclosure by the attorney-client,

1 official information, and deliberative process privileges, and the work product doctrine.
2 Respondents further object to this interrogatory on the grounds that it seeks information
3 which is not relevant to the claims and defenses at issue in this case and is not likely to
4 lead to the discovery of admissible evidence.

5 **Interrogatory No. 17:**

6 Please identify any and all investigations that the California Department of
7 Education has initiated or concluded, since on January 1, 2020, concerning any local
8 education agency’s adoption of policies relating in any way to gender identity.

9 **Response to Interrogatory No. 17:**

10 Respondents object to this Interrogatory to the extent it seeks information outside
11 of the possession, custody, and control of the SBE. Respondents object to this
12 interrogatory on the grounds that it is burdensome and harassing when it concerns the
13 investigations by a separate entity, the CDE, but is directed to Respondents, none of
14 whom are employees or officers of the CDE, and were instead appointed to the SBE,
15 which is a separate entity from the CDE. Respondents further object to this
16 Interrogatory to the extent it seeks information that is protected from disclosure by the
17 attorney-client, official information, and deliberative process privileges, and the work
18 product doctrine.

19
20 Dated: March 11, 2024

LEN GARFINKEL
General Counsel
PAUL GANT
Assistant General Counsel

21
22
23 By:

Virginia Cale Digitally signed by Virginia Cale
Date: 2024.03.11 10:04:41
-07'00'
VIRGINIA CALE
Deputy General Counsel
Attorney for State Education Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Lisa Constancio, am the Senior Deputy Director for the California State Board of Education (SBE). I am authorized to make this verification on behalf of Linda Darling-Hammond, Cynthia Glover Woods, Francisco Escobedo, Brenda Lewis, James J. McQuillen, Sharon Olken, Gabriela Orozco-Gonzalez, Kim Pattillo Brownson, Haydee Rodriguez, Alison Yoshimoto-Towery, and Naomi Porter, in their official capacity as members of the SBE. I have read the foregoing DEFENDANTS STATE BOARD OF EDUCATION MEMBERS’ RESPONSES AND OBJECTIONS TO PLAINTIFF MIRABELLI’S INTERROGATORIES TO THE STATE DEFENDANTS, SET ONE, and I believe that the answers stated herein are accurate based upon information available to the SBE.

I declare under penalty of perjury of the laws of the United States that the above is true and correct, and that this verification is executed on this 11th day of March, 2024 at Sacramento, California.

Lisa Constancio

LISA CONSTANCIO

EXHIBIT 12



LIMANDRI & JONNA LLP

CHARLES S. LIMANDRI**
PAUL M. JONNA*

MARK D. MYERS
JEFFREY M. TRISSELL†
JOSHUA A. YOUNGKIN
ROBERT E. WEISENBURGER
MILAN L. BRANDON II
JOHANNA DELEISSEGUES

BRIAN D. MILLER
RICHARD SALPIETRA
Of Counsel

*BOARD CERTIFIED CIVIL TRIAL ADVOCATE
ADMITTED TO THE DISTRICT OF COLUMBIA BAR
ADMITTED TO THE NEW YORK BAR
†ADMITTED TO THE U.S. SUPREME COURT

MAILING ADDRESS:

POST OFFICE BOX 9120
RANCHO SANTA FE, CALIFORNIA 92067
TELEPHONE: (858) 759-9930
FACSIMILE: (858) 759-9938

WEBSITE: www.limandri.com

PHYSICAL ADDRESS:

16236 SAN DIEGUITO ROAD
BUILDING 3, SUITE 3-15
RANCHO SANTA FE, CA 92091

KATHY DENWORTH
Office Administrator

March 25, 2024

**Via E-Mail: vcale@cde.ca.gov
& U.S. Mail**

Virginia G. Cale, Esq.
Deputy General Counsel
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814
Telephone: (916) 319-0860

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

Dear Ms. Cale:

This letter is written to commence the meet and confer process regarding the State Education Defendants' responses to Plaintiffs' first set of written discovery. Specifically, on February 9, 2024, Plaintiff Elizabeth Mirabelli propounded seventeen special interrogatories and twenty-three requests for admission. On that same date, Plaintiff Lori Ann West propounded ten of her own requests for admission. And both Plaintiffs Mirabelli and West jointly propounded fourteen document requests.

In response to these four sets of written discovery, your office served eight sets of responses on March 11, 2024. Defendant State Superintendent Tony Thurmond served responses to each set, and the eleven members of the State Board of Education served a joint response to each set. Your office also served a privilege log containing six entries and titled "Thurmond – Privilege Log." The first five entries appear to concern a single document each, and the sixth entry concerns all of the communications in a single investigation file. This letter solely concerns the State Education

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 2

Defendants' responses to the interrogatories and document requests—not the requests for admission.

The procedure for resolving discovery disputes is set forth in Section VIII of Magistrate Judge Torres' Chambers Rules. As stated therein, the parties must “thoroughly meet and confer in person or by videoconference regarding all disputed issues,” and “[l]etters, emails, or telephone calls do not satisfy this requirement.” § VIII.A. If the parties cannot reach an agreement, we must jointly call Chambers and explain the dispute to the law clerk. The Court will then either set a discovery conference or set a briefing schedule. § VIII.C. This call to Chambers must be made within 45 days of the discovery responses being served, or no later than April 25, 2024. § VIII.E.¹

Although a letter is not sufficient, we think exchanging letters is a necessary step for a “thorough” meet and confer. In light of the 45-day deadline, please provide a written response to this letter no later than Friday, **April 5, 2024**, and propose times when you are available for a videoconference meet and confer the week after.

I. Responses to the Seventeen Interrogatories

A. The State Board May Not Feign Ignorance

First, in general, the State Board of Education refused to provide any substantive responses, objecting on the basis that the State Board is distinct from the California Department of Education (“CDE”). This objection came in the following form:

Respondents, appointed to the SBE, lack knowledge of the reasons behind the decision to draft documents, which were drafted and maintained by a separate entity, the CDE, and which were drafted and posted on the CDE's webpage before any of the Respondents were appointed to their roles on the SBE and none of Respondents are employees or officers of the CDE.

This specific objection was included as the ultimate response to Interrogatory Nos. 1-4. However, other interrogatory responses included a similar response, stating that “Respondents object to this interrogatory on the grounds that it is burdensome and harassing, as Respondents and SBE had no role in the drafting of the CDE FAQ, which was drafted by the CDE and maintained on the CDE website years before Respondents' appointments to the SBE.” (Nos. 5, 6; *see also* Nos. 10, 15-17 [similar].) Other responses state similarly that “Respondents object to this interrogatory on the grounds that it is burdensome and harassing when directed at these

¹ <https://www.casd.uscourts.gov/judges/torres/docs/Civil%20Chambers%20Rules.pdf>.

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 3

Respondents, who have been sued in their official capacities as members of the SBE.” (Nos. 7-9, 11-14.)

There is no immunity from participating in discovery simply because the State Board Members have been sued in their official capacity. And the attempt to create distance between the State Board and the California Department of Education is frivolous: “The Department of Education shall be administered through: (a) The State Board of Education which shall be the governing and policy determining body of the department.” Cal. Educ. Code § 33301(a). Thus, “the Legislature has made it clear that *the ultimate governing and policy making body* for the department and its officers and employees ... is the Board of Education. Without *ultimate control* over the conduct of the officers and employees of the Department of Education, the State Board of Education cannot insure the implementation of its policies.” *State Bd. of Educ. v. State Superintendent Honig*, 13 Cal. App. 4th 720, 766 (1993) (quoting 41 Ops.Cal.Atty.Gen. 105, 111 (1963)) (ellipses and italics in original).

Indeed, the State Board Members’ attempt to create distance between themselves and the California Department of Education was already rejected by the Court when it denied their motion to dismiss. *See Mirabelli v. Olson*, No. 3:23-cv-768, 2023 WL 5976992, at *16 (S.D. Cal. Sept. 14, 2023) (“the State Board of Education FAQs publication”).

Because the State Board has “ultimate control” it is improper for the State Board to feign ignorance. A party responding to an interrogatory “cannot limit her answers to matters within her own knowledge and ignore information immediately available to her or under her control.” *Hawkins v. Kroger Co.*, No. 15-cv-2320, 2019 WL 4416132, at *8 (S.D. Cal., Sept. 16, 2019). The responding party “is obligated to respond to the fullest extent possible.” *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013). The party need not “conduct extensive research in order to answer [it], but a reasonable effort must be made.” *Hawkins*, 2019 WL 4416132 at *8.

“The responding party shall use common sense and reason, and hypertechnical, quibbling, or evasive objections will not be treated with favor.” *Jacobs v. Quinones*, No. 1:10-cv-2349, 2014 WL 2091252, at *5 (E.D. Cal. May 16, 2014) (citation omitted). If the party cannot furnish details, she “should say so under oath, and say why and set forth the efforts used to obtain the information.” *Hawkins*, 2019 WL 4416132 at *8 (citation omitted). A party cannot “plead ignorance to information that is from sources within his control.” *Id.* (citation omitted). *Accord Pineda v. Abbot Labs., Inc.*, No. CV 18-3395, 2021 WL 3832832, at *5 (C.D. Cal., July 8, 2021) (“Plaintiff must search for and review documents to which he has reasonable access that would assist in responding to these interrogatories.”).

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 4

Please confirm that the State Board will serve amended responses providing substantive responses to Interrogatory Nos. 1-4, 6-10, 12, 15-17 (presumably identically to the State Superintendent), and not relying on this objection to limit your responses to the remaining interrogatories.

B. The Names of the Individuals Involved with Drafting or Editing the Legal Advisory & FAQ Page

Second, in response to Interrogatory Nos. 3 and 4, both the State Board and the State Superintendent refused to identify the names of the drafters or editors of the 2016 Legal Advisory on Gender Identity or the FAQ page, and refused to identify any current “attorney employees.” Specifically, the State Superintendent responded with the statement: “Respondent has not been able to confirm the names of the actual drafters or editors of the initial advisory or FAQs, and no current non-attorney employees of the CDE aided in the drafting, editing or reviewing of the advisory and FAQs.” As a result, the State Superintendent also refused to answer the follow-on interrogatory asking for their roles within the CDE and with respect to the pages. As stated above, the State Board refused to answer Nos. 3-4 on the basis that they allegedly do not know.

Clarification is needed regarding what the State Superintendent means by “not been able to confirm.” As stated above, he is required to “set forth the efforts used to obtain the information.” *Hawkins*, 2019 WL 4416132, at *8. “[A] party to a civil litigation in the federal system is under a severe duty to make every effort to obtain the requested information and, if, after an adequate effort, he is unsuccessful, *his answer should recite in detail the attempts he made to acquire the information.*” *Schudel v. Searchguy.com, Inc.*, No. 07 CV 695, 2008 WL 11337244, at *6 (S.D. Cal. Aug. 21, 2008) (original italics); *see also Ferguson v. Wilcher*, No. 17 CV 5777, 2019 WL 3017670, at *1 (C.D. Cal. Apr. 3, 2019). Even if you are unable to “confirm” that the individuals listed above were the actual drafters or editors of the documents, Plaintiffs are entitled to know the identities of the individuals generally involved.

Further, in his response, the State Superintendent also raised objections on the bases of attorney-client privilege, work-product, and deliberative process privilege. This assertion of privilege appears to refer to the first six entries on the privilege log, which are reproduced below:

///

///

///

Virginia G. Cale, Deputy General Counsel
 California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 5

Date	Author	Recipient	Type of Document	Subject Matter	Privilege Claimed	Attachments
12/12/2013	CDE Legal Counsel	Various CDE employees	Email chain	AB 1266 and developing FAQs	Attorney-client, Deliberative Process	None
1/6/2014	CDE Legal Counsel	Various CDE employees	Email chain	AB 1266 FAQ draft	Attorney-client, work product, deliberative process	Draft AB 1266 FAQs
7/17/2015	CDE Legal Counsel	Various CDE employees	Email	OCEC v. CDE, Revisions to FAQ and Advisory	Attorney-client, work product, deliberative process	2013 03 18 CDE Legal Advisory (Rev); AB 1266 FAQ (PJS Rev); gender legal advisory2 04-04
7/17/2015	CDE Legal Counsel	Various CDE employees	draft document	Revisions to 2013 03 18 CDE Legal Advisory	Attorney-client, work product, deliberative process	none
7/17/2015	CDE Legal Counsel	Various CDE employees	draft document	Revisions to AB 1266 FAQ	Attorney-client, work product, deliberative process	none

To begin, Magistrate Judge Torres’ Chambers Rules include a specific format for privilege logs, with which the above failed to comply. § IX. And this log indicates that you do, in fact, know the names of the various individuals involved in editing and drafting the Legal Advisory and FAQ page on Gender Identity—the names listed on the above documents. The log appears to intentionally withhold the names of these individuals for the sole purpose of frustrating discovery. This is improper. “When a party withholds information otherwise discoverable by claiming that the information is privileged ... the party must ... describe the nature of the documents ... and do so in a manner that, without revealing information itself privileged or protected, *will enable other parties to assess the claim.*” Fed. R. Civ. P. 26(b)(5) (emphasis added); *see also Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1148 (9th Cir. 2005) (explaining that Rule 26 requires a party claiming privilege to “provide sufficient information to enable other parties to evaluate the applicability of the claimed privilege or protection”).

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 6

“The party asserting the privilege bears the burden of establishing all necessary elements.... The most common way to do this is with a privilege log. In the Ninth Circuit, a privilege log must identify (a) the attorney and client involved . . . [and] (d) all persons or entities known to have been furnished the document or informed of its substance.” *Apple Inc. v. Samsung Elecs. Co.*, 306 F.R.D. 234, 237 (N.D. Cal. 2015). In determining whether privilege was waived, “[t]he applicable standard is . . . whether the ‘the documents were distributed on a ‘need to know’ basis.” *F.T.C. v. GlaxoSmithKline*, 294 F.3d 141, 147 (D.C. Cir. 2002). This is why a privilege log should list the “identity and position” of every person on the communication. *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 473 (2d Cir. 1996). This also generally requires logging individual emails—not whole email chains. *See Helm v. Alderwoods Grp., Inc.*, No. C 08-1184, 2010 WL 2951871, at *2 (N.D. Cal. July 27, 2010).

“In cases that involve in-house counsel, it is necessary to apply the privilege cautiously and narrowly ‘lest the mere participation of an attorney be used to seal off disclosure.’” *Neuder v. Battelle Pac. Nw. Nat. Lab.*, 194 F.R.D. 289, 295 (D.D.C. 2000); *see also In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984) (“The lawyer whose testimony the government seeks in this case served as in-house attorney. That status alone does not dilute the privilege.... [But t]he Company can shelter C’s advice only upon a clear showing that C gave it in a professional legal capacity.”). And “unlike communications with outside counsel, which are presumed to be made for the purpose of seeking legal advice, there is no presumption that communications with in-house counsel are protected by attorney-client privilege.” *Dolby Lab’s Licensing Corp. v. Adobe Inc.*, 402 F. Supp. 3d 855, 866 (N.D. Cal. 2019).

Here, the log should include the specific names of both the authors and recipients. Simply providing the vague descriptors of “CDE Legal Counsel” and “Various CDE employees” is insufficient—or even worse, simply “various.” If you refuse to provide a corrected log listing the individuals’ actual names and titles, then we will move to compel production of the documents on the basis that you have waived privilege by failing to justify it. Then, those names should be included in the interrogatory responses—along with their specific roles in editing or drafting—because, as stated above, they are indeed known.

C. Contention Interrogatories Asking for Application of Law to Facts

Third, both the State Superintendent and the State Board refused to answer certain contention interrogatories on the basis that they allegedly called for a legal conclusion. Specifically, Plaintiffs asked for the legal authority undergirding the statement in the FAQ page that schools are required to withhold a student’s transgender status from their parents. (No. 5.) Plaintiffs also asked for the State Education Defendants, “[i]f YOU contend” the following, to

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 7

explain why “informing parents of their child’s gender identity and using preferred names and pronouns is not speech” (No. 11), why “withholding a student’s gender identity from his or her parents, absent express permission, satisfies strict scrutiny” (No. 13), and why “withholding a student’s gender identity from his or her parents, absent express permission, does not violate parental rights under the Fourteenth Amendment.” (No. 14.) In response to all, both the State Superintendent and State Board objected that they would not provide a legal conclusion.

This objection is without merit. “Generally, the fact that an interrogatory calls for a legal conclusion is not grounds for an objection.” *Thomas v. Cate*, 715 F. Supp. 2d 1012, 1029 (E.D. Cal. 2010). “The only kind of interrogatory that is objectionable on the basis that it calls for a legal conclusion is one that extends to legal issues unrelated to the facts of the case.” *Id.* Here, we are asking for the State Education Defendants to confirm (or disavow) their “conten[tions]” and to justify them. Yet the State Education Defendants did not even answer whether they are making such contentions. If they are, then we are asking for the application of legal theory to the specific facts and issues in this case, which is appropriate.

D. Ambiguous “Subject to Objections” Responses Need to Be Clarified

Lastly, throughout, both the State Superintendent and State Board included objections but then sometimes provided substantive responses “[s]ubject to such objections.” As a general matter, this is improper because it creates ambiguity as to whether material is being withheld on the basis of objections: “The responses are confusing and misleading because, for example, when a party responds to an interrogatory that is ‘subject to’ and ‘without waiving its objections,’ the propounder of the interrogatory is left guessing as to whether the responding party has fully or only partially responded to the interrogatory.” *Sherwin-Williams Co. v. JB Collision Servs., Inc.*, No. 13-CV-1946, 2014 WL 3388871, at *2 (S.D. Cal. July 9, 2014) (some quotation marks omitted); *accord Herrera v. AllianceOne Receivable Mgmt., Inc.*, No. 14-CV-1844, 2016 WL 1182751, at *3 (S.D. Cal. Mar. 28, 2016).

This is particularly problematic here with respect to Interrogatory Nos. 15, 16, and 17 as it is unclear whether the State Superintendent is withholding any information on the bases of the objections. Please clarify whether any information is being withheld.

II. Responses to the Fourteen Document Requests

A. The State Board’s Continued Feigning of Ignorance is Improper

Like above, the first issue is that the State Board again refused to produce anything, stating that everything is “in the possession, custody, and control of the CDE and not the SBE,

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 8

which is a separate entity.” (Document Request Nos. 1, 2, 4.) This, of course, is not true as the SBE has “ultimate control” over the CDE, *Honig*, 13 Cal. App. 4th at 766, and “[a] party is deemed to have control over documents if he or she has a legal right to obtain them.” *Bryant v. Armstrong*, 285 F.R.D. 596, 607 (S.D. Cal. 2012). The State Board needs to amend its responses.

More concerning, the State Board frequently states that it has “no non-privileged records responsive to this request, as no non-privileged records responsive to this request are in the possession, custody, or control of SBE.” (Nos. 3, 5-14.) Yet the privilege log that was produced conspicuously states that it is the State Superintendent’s privilege log: “Thurmond – Privilege Log.” Especially when compared to the State Superintendent’s responses, the State Board’s responses are ambiguous as to whether: (A) material is being withheld and not logged; (2) the State Board is joining the State Superintendent’s log (which is complete); or (3) there is no material. Please clarify.

On this point, we note that, in response to Document Request No. 3, the State Superintendent stated unequivocally that no documents exist. Does the State Board join in this? Or is it withholding material? For No. 6, the State Superintendent did not object on the basis of privilege (only overbreadth and relevance). Does the State Board contend that it has responsive privileged documents?

B. Communications with Regino and Chino Counsel Need to Be Produced, or the Objections Need to Be Substantiated

The next issue is that the State Superintendent refused to produce documents exchanged with counsel for the plaintiff in *People v. Chino Valley Unified School Dist.*, No. CIV SB 2317301 (Cal. Super. Ct., San Bernardino County, Aug. 28, 2023), or the defendant in *Regino v. Staley*, No. 2:23-cv-32 (E.D. Cal., Jan. 6, 2023). (*See* Nos. 5-6.)

With respect to the *Regino* case, the defense is being handled by attorneys Brian A. Duus and Jimmie E. Johnson of Leone Alberts & Duus APC. You objected that the request was: (1) vague and ambiguous; (2) overbroad and not proportional because it was not limited by subject matter and the attorneys represent various school districts; and (3) seeks documents not relevant to this case.

We think that *Regino* is actually directly relevant to this case, especially with respect to the State Education Defendants’ argument that Plaintiffs lack standing to sue them. We believe that communications with the *Regino* counsel may shed light on the motives and beliefs of the State Education Defendants and confirm Plaintiffs’ standing to sue them. In terms of the

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 9

overbreadth and proportionality objections, it is your burden to establish those objections. *Hall v. Marriott Int'l, Inc.*, No. 3:19-CV-1715, 2021 WL 1906464, at *10 (S.D. Cal. May 12, 2021) (the party “claiming that a discovery request is unduly burdensome must allege specific facts which indicate the nature and extent of the burden”).

Further, in response to such objections, you still have a duty to produce a narrower subset, based on what believe is a fairly tailored request. “[W]hen a party objects to a request for production because it is overbroad, it must also acknowledge if ‘some part of the request is appropriate [and] state the scope that is not overbroad.’” *Al Otro Lado, Inc. v. Nielsen*, 328 F.R.D. 408, 418 (S.D. Cal. 2018) (quoting Advisory Committee Notes, Fed. R. Civ. P. 34 (2015)). Thus, “even if [the request] was somehow interpreted as being overbroad, that is *not* an excuse to fail to supply an answer.” *Vanhorn v. Behavioral Support Services, Inc.*, No. 6:07-CV-1696, 2008 WL 4539463, at *1 (M.D. Fla. Oct. 8, 2008). “[I]f any [document request] is objectionable because of overbreadth, the responding party, although objecting, must answer the [request] to the extent that the [request] is not overbroad. In other words, an objection for overbreadth does not relieve the duty to respond to an extent that is not overbroad.” *Id.*

Here, you did not suggest limiting this to communications about the *Regino* case, communications about the present case, or communications within a certain timeframe. Nor did you explain whether responsive communications are rather discrete or voluminous. Rather, it seems likely that you are primarily objecting on relevance. Please clarify the burden of producing all responsive documents and/or if you will propose any narrowing. We expect that, upon clarifying the volume of communications that we will not agree to any narrowing as the production of them will not actually be burdensome

With respect to the *Chino* case, in addition to the above objections, you included an objection that the document request “includes communications made under the authority of a Common Interest/Joint Defense Agreement.” The objection implies that some communications are *not* privileged. For the reasons stated above, those should be produced. With respect to communications that are privileged, you have not produced a log. Please immediately do so or we will move to compel on the basis that you have not substantiated your privilege objection.

C. *Objections Regarding Documents Underlying the Legal Advisory and FAQ Page Need to Be Substantiated*

Third, Plaintiffs asked for all documents and emails relating to the CDE’s adoption of its Legal Advisory on Gender Identity and accompanying FAQ page. (Document Request Nos. 7-10.) In response, State Education Defendants raised the attorney-client privilege, work-product

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 10

privilege, and deliberative process privilege. As stated above, you logged five entries, including two email chains, one single email, and two “draft documents.”

Based on the description of the subject matter, the first entry (12/12/2013) appears likely to concern an instruction to staff to begin preparing the FAQs. The second entry (1/6/2014) includes the circulation of the draft FAQs. And the third entry, a year and a half later (7/17/15), apparently concerns revisions.

As stated above, your log is inadequate for failing to include the names of the individuals involved and failing to log separate emails instead of whole email chains. Without an adequate privilege log, there is no method for Plaintiffs to confirm the appropriateness of any of the privilege assertions. This is particularly concerning with respect to the deliberative process privilege which, as you know, is a qualified privilege—not an absolute privilege. *See In re McKesson Governmental Entities Average Wholesale Price Litig.*, 264 F.R.D. 595, 601 (N.D. Cal. 2009); citing *Assembly of State of Cal. v. U.S. Dep’t of Com.*, 968 F.2d 916, 920 (9th Cir. 1992).

To substantiate a deliberative process privilege objection, you must explain why each document is “deliberative” and “predecisional.” *In re McKesson*, 264 F.R.D. at 600. Further, “the deliberative process privilege may be invoked only by the agency head after personally reviewing the documents for which the privilege is asserted.” *Id.* at 601. Because “[f]actual material generally is not considered deliberative,” producing partially redacted documents is often required. *Id.* And, being qualified, the Court may overrule the privilege depending on: “1) the relevance of the evidence; 2) the availability of other evidence; 3) the government’s role in the litigation; and 4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions.” *Id.*

Here, on the issue of the attorney-client and work product privileges, your log is deficient. Further, with respect to the deliberative process privilege, it seems likely that, at the very least, the documents could be produced with only “deliberative” material redacted and “factual” material left unredacted. Further, we think the relevance of the documents may be sufficiently great to justify overcoming the privilege. Thus, we will likely seek in camera review of them. *See Vietnam Veterans of Am. v. C.I.A.*, No. 09-cv-37, 2011 WL 5882875, at *2 (N.D. Cal. Nov. 23, 2011). Please update your log to comply with Judge Torres’ Chambers Rules, including by listing all individuals who authored or received the documents, and logging individual emails instead of whole chains. Please also provide evidence substantiating the deliberative process privilege so that we can evaluate it. *See In re McKesson*, 264 F.R.D. at 602 (“In order to invoke

Virginia G. Cale, Deputy General Counsel
California Department of Education

Re: Meet & Confer Regarding Written Discovery Responses, *Mirabelli & West v. Olson, et al.*, No. 3:23-cv-00768-BEN-VET (S.D. Cal., Apr. 27, 2023)

March 25, 2024

Page 11

the privilege, ... CDHCS should have provided a declaration from an agency head that includes the following information with respect to each document...”).

D. Documents Regarding the Rocklin Investigation

Lastly, Plaintiffs asked for all documents concerning the CDE’s investigation into the Rocklin Unified School District. (Document Request No. 13.) After asserting privilege, the State Education Defendants stated that no non-privileged documents exist. Then, on the privilege log, the State Superintendent listed the entire Rocklin file and stated that it is being withheld on the basis of the deliberative process privilege.

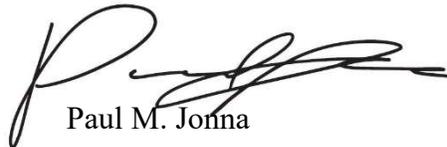
Like above, this objection needs to be substantiated “with respect to each document for which the deliberative process privilege is asserted.” *See In re McKesson*, 264 F.R.D. at 602. By logging the entire file, the privilege cannot be meaningfully tested. Moreover, it seems particularly likely that there is non-privileged “factual” matter within the file. Thus, please update your log to discuss each separate document within the file and substantiate the objection via declaration.

* * *

For the reasons discussed above, Plaintiffs believe that the State Education Defendants’ responses to their interrogatories and document requests are deficient and should be amended as discussed above. We look forward to receiving your written response no later than **Friday, April 5, 2024**, and meeting and conferring via videoconference during the week of April 8-12.

Sincerely,

LiMANDRI & JONNA LLP



Paul M. Jonna

PMJ/jmt