

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JIONNI CONFORTI,

*Plaintiff,*

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,  
INC.; ST. JOSEPH'S HOSPITAL AND  
MEDICAL CENTER D/B/A ST. JOSEPH'S  
REGIONAL MEDICAL CENTER; and  
FATHER MARTIN D. ROONEY,

*Defendants.*

Case No. 2:17-cv-00050-CCC-CLW

**PLAINTIFF'S REPLY IN FURTHER SUPPORT OF HIS MOTION (1) TO QUASH  
SUBPOENAS AND (2) FOR A PROTECTIVE ORDER**

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### **PRELIMINARY STATEMENT**

In seeking to depose *nine* of Mr. Conforti's medical and mental health providers, Defendants fundamentally misapprehend the nature of damages for "garden variety" emotional distress. Mr. Conforti seeks compensatory damages for the "emotional distress and suffering, embarrassment, humiliation, emotional pain and anguish, violation of his dignity, and loss of enjoyment of life," he suffered as a result of Defendants' discriminatory acts. (Dkt. 1 at 25, ¶ C). This is the textbook definition of "garden variety" emotional distress.

Yet, as Defendants would have it, whenever a plaintiff alleges to have suffered "garden variety" emotional distress, the floodgates open to flyspeck their life's medical and mental health records. Over 40% of Americans have seen a mental health professional at some point.<sup>1</sup> Under Defendants' proposed rules, however, *anyone* claiming to have suffered "garden variety" emotional distress as a result of being a victim of discrimination must be willing to expose his entire life's medical and mental health histories to intrusive discovery. The Court should reject Defendants' proposed framework, which would discourage transgender victims (or *any* victims) of intentional discrimination from seeking justice.

This case poses a simple question: Was Defendants' refusal to allow Mr. Conforti to schedule a hysterectomy at their hospital unlawful under federal and state law? Defendants' opposition provides no explanation of why their Subpoenas are needed to answer that question. The Court should grant Mr. Conforti's Motions to Quash and for a Protective Order.

### **ADDITIONAL FACTUAL BACKGROUND**

Defendants state that they have been seeking Mr. Conforti's medical and psychotherapy records since August 7, 2017 and that Mr. Conforti did not agree to produce said records until

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<sup>1</sup> Barna Grp., *Americans Feel Good About Counseling* (Feb. 27, 2018), <https://perma.cc/H4PB-22PT>.

“[a]fter much back and forth.” (Opp. 4). Not so. The actual timeline of events is below:

- **July 5, 2017:** Defendants served document requests, including: (1) “All documents related to *any* medical treatments [Mr. Conforti] sought during the period of January 1, 2007 until the date of your response” (Ex. 1 at ¶ 18 (emphasis added)); and (2) the same for “any psychiatric or psychological treatments” (*Id.* at ¶ 19).
- **August 7, 2017:** Mr. Conforti responded by: (1) objecting to such Requests related to “any” medical treatment over ten years as “overbroad and unduly burdensome,” and were made “regardless of whether they are relevant or relate to the claims or defenses at issue in this action”; but (2) stating he was “willing to meet and confer with Defendants to clarify the scope of [these] Request[s] and to negotiate an acceptable release form.” (Ex. 2 at 12-13). Defendants never responded until *more than seven (7) months later*. (See Ex. 3).
- **April 10, 2018:** Defendants finally asked to meet and confer. To avoid unnecessary motion practice, Mr. Conforti agreed to produce: “records (1) dated from January 1, 2011, to August 7, 2017, (*i.e.* the date your Interrogatories and RPDs were answered, as stated in your written requests) and (2) related to (a) mental health treatments Mr. Conforti received and (b) related to Mr. Conforti’s diagnosis and/or treatment for gender dysphoria.” (Ex. 4 at 4.) As such, these records pertained to “primary care physicians and mental health providers of Mr. Conforti: Dr. Rissy Batista, Dr. Vincent Fitzgerald, Dr. Ian Tang, Dr. Charles Haddad, Dr. Joseph Vitale, and Dr. Peter Raphael.” (*Id.*)
- **July 20, 2018:** Mr. Conforti produced records from six of his medical providers, dating from January 1, 2011 to August 7, 2017 (the date of Mr. Conforti’s discovery responses, as originally requested by Defendants).
- **October 18, 2018:** Nevertheless, Defendants were unsatisfied, and demanded that the date range for their July 2017 discovery requests be expanded until the date of trial. Once again, in the spirit of cooperation, Mr. Conforti agreed to expand the date range to August 23, 2018, and produced by this date a total of 346 pages of records.
- **January 7, 2019:** Just *three weeks* before the close of discovery, Defendants issued six subpoenas for depositions and documents from Mr. Conforti’s medical providers: Dr. Vitale; Mary Vitale; Rissy Batista; Dr. Haddad; Vincent Fitzgerald; and Dr. Tang.
- **March 4, 2019.** Defendants identify for the first time *three more* medical providers identified in the very discovery produced to them over a year and a half ago who they want to depose: (1) Dr. Avery Katz; (2) Dr. Diana Vitale; and (3) “another individual” with Dr. Tang’s former employer, APICHA Community Health Center (Opp. 12 n.2).

## ARGUMENT

### **I. Defendants’ Requests To Depose The Providers, Particularly The Additional Providers First-Requested in Their Brief, Are Untimely and Improper.**

From the very outset it should be noted that Defendants failed to notice any of their medical

provider subpoenas “in a timely fashion,” instead waiting until the eve of the close of discovery to issue the Subpoenas. *See NE Techs., Inc. v. Evolving Sys., Inc.*, 2008 WL 4277668, at \*5 (D.N.J. Sept. 12, 2008) (denying party’s motion to compel responses to discovery requests issued 16 days before the discovery deadline). Here, Defendants first noticed six medical providers on January 7, 2019, a mere three weeks before the close of fact discovery and *after years and months* for which they knew the identity of these providers and had their medical records in their possession. The same holds true for the new requests they improperly make *for the first time* through their brief. Because Defendants “should have known that a relatively simple request ... would have produced information helpful ... at an earlier date in the litigation,” and instead chose to engage in undue delay, their Subpoenas are “not considered timely” and should be quashed. *Id.*; *see also*, *e.g.*, *Holmes v. City of New York*, 2017 WL 519250, at \*3 (S.D.N.Y. Feb. 8, 2017) (affirming denial of motion to compel when the party waited two months after learning of the material before issuing her discovery request four days before the close of discovery).<sup>2</sup>

## **II. The Subpoenas Seek Irrelevant Testimony And Documents.**

### **A. Mr. Conforti Claims Only “Garden Variety” Emotional Distress, And Has Not Put His Medical Or Mental Health Records At Issue.**

In their opposition (at 15-17), Defendants miss the forest for the trees on how courts treat “garden variety” damages claims—the only damages for which Mr. Conforti seeks compensation.

Defendants assert that Mr. Conforti’s damages claims are not “garden variety” because Mr. Conforti’s “life experiences and history of depression and anxiety, stemming from numerous

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<sup>2</sup> Defendants argue (Opp. 4, 6) Mr. Conforti erred in the timely and accurate production of records for several requested individuals. This is wrong. During the pendency of this case—now going into its third year of discovery—both Dr. Tang and Ms. Batista have left their practices and Mr. Conforti is unaware of their present whereabouts. Mr. Conforti acted in good faith by providing their medical records and contact information as it was available to him. Mr. Conforti was not provided with their forwarding addresses, and it is not his burden to locate them, particularly since he is not relying on their testimony.

stressors, are multilayered, highly unusual, and complex.” (Opp. 16). Even assuming Mr. Conforti’s medical history is “multilayered, highly unusual, and complex,” Defendants fail to show how that makes Mr. Conforti’s damages claim not “garden variety” or establishes relevancy here. Instead, Defendants merely conflate and blur Mr. Conforti’s unrelated past experiences with the “garden variety” emotional distress particular to Defendants’ violation of state and federal law

“[G]arden variety damages are those which are normally associated with or attendant to the alleged injury, including the negative emotions experienced as the intrinsic result of defendant’s alleged conduct, such as humiliation, embarrassment, and other similar emotions.” *Kubik v. Cent. Mich. Univ. Bd. of Trs.*, 2016 WL 9631633, at \*4 (E.D. Mich. Mar. 17, 2016) (cleaned up), *objections overruled*, No. 15-CV-12055, 2016 WL 4425174 (E.D. Mich. Aug. 22, 2016). “Garden variety” emotional distress damages are “those which naturally flow from the defendants’ alleged misconduct, which is to say injuries which the average or ordinary person might be expected to suffer as a result of defendants’ conduct.” *Id.* “These damages generally require no diagnosis or treatment, and often come in the form of claims of generalized insult, hurt feelings, and lingering resentment.” *Id.* Here, Mr. Conforti requests compensatory damages for the “emotional distress and suffering, embarrassment, humiliation, emotional pain and anguish, violation of his dignity, and loss of enjoyment of life,” he suffered as a result of Defendants’ actions. (Dkt. 1 at 25 ¶ C.) Mr. Conforti *does not* assert that Defendants caused any condition or mental health illness for which he needed medical treatment, nor is he seeking compensation for any past, present, or future mental health treatment. As such, his claim is a textbook example of a “garden variety” emotional distress claim.

Defendants’ position that Mr. Conforti has asserted more than “garden variety” emotional distress rests entirely on two phrases in the Complaint: that when he was informed Defendants

discriminated against him, Mr. Conforti became “deeply depressed” and was caused “great anxiety.” (Opp. 1). Notwithstanding that any person would be saddened after being subjected to discrimination, these phrases were not included in Mr. Conforti’s causes of action for “garden variety” emotional distress or the operative language in his prayer for relief. (Dkt. 1 at 25 ¶ C.) Mr. Conforti’s assertion that he was depressed (*i.e.*, saddened) as a result of Defendants actions is neither extraordinary nor an assertion of “unusually severe emotional distress.” It simply describes expected feelings a person would experience after being discriminated against.

Put simply, Mr. Conforti: (1) does not allege any cause of action for intentional or negligent infliction of emotional distress; (2) is not claiming any specific mental or psychiatric injury or disorder; (3) has not asserted that he suffers any unusually severe emotional distress; (4) is not using expert testimony or his medical records as proof of his emotional distress; and (5) has not conceded that his mental condition is in controversy. *See Kubik*, 2016 WL 9631633, at \*6; *St. John v. Napolitano*, 274 F.R.D. 12, 19 (D.D.C. 2011). This Court should follow the standard course and recognize that Mr. Conforti has only asserted “garden variety” emotional distress damages, which does not blow the door open to his entire medical and mental health histories for Defendants’ dissection. *See Michaels v. Rutgers Univ.*, 2017 WL 4536115, at \*4 (D.N.J. Oct. 11, 2017); *see also Jackson v. Chubb Corp.*, 193 F.R.D. 216, 226 (D.N.J. 2000).

**B. Defendants’ Cited Authorities Are Inapposite.**

Mr. Conforti’s “garden variety” emotional distress damages claim is easily distinguishable from the independent, severe emotional distress claims asserted Defendants’ cases. (Opp. 16-17.)

*First*, in *In Re Consolidated RNC Cases*, 2009 WL 130178 (S.D.N.Y. Jan. 8, 2009), the claims at issue included “causes of action for intentional infliction of emotional distress and negligent infliction of emotional distress.” *Id.* at \*7 (internal citations omitted). Mr. Conforti has not pleaded any independent claims of emotional distress, but the sort of emotional distress that



any ordinary person might feel as a result of Defendants' discriminatory conduct. *See, e.g., Kunstler v. City of N.Y.*, 2006 WL 2516625, at \*9 (S.D.N.Y. Aug. 29, 2006).

**Second**, Mr. Conforti does not allege "unusually severe emotional distress" akin to the plaintiff in *EEOC v. Maha Prabhu, Inc.*, 2008 WL 879741 (W.D.N.C. Mar. 28, 2008), who "had trouble sleeping and interacting with people, was unable eat, and was fearful of rejection from other employers." *Id.* at \*2. As Defendants acknowledge, Mr. Conforti experienced simple and incidental emotional distress as a result of Defendants' discriminatory acts, including "being upset, hurt and you know, shame and of course some depression." (Mayer Decl., Ex. A at 162:2-15).

**Third**, as Defendants acknowledge, in *Jackson v. Chubb*, "the Court held that the plaintiff alleged *more than* 'garden variety' emotional distress" (Opp. 13 (emphasis added)), which is required for a plaintiff to place his mental condition at issue, 193 F.R.D. at 226.

**Fourth**, the cases Defendants rely upon (Opp. 12-15) where plaintiffs were found to have waived the psychotherapist-patient privilege involve far different circumstances. In *Sarko v. Penn-Del Directory Co.*, for example, the plaintiff placed her mental condition squarely at issue by claiming that she had clinical depression for which her former employer denied her an accommodation in violation of the Americans with Disabilities Act. 170 F.R.D. 130 (E.D. Pa. 1997). Thus, her mental condition *itself* formed the basis of the claimed violation. In contrast, Mr. Conforti's membership in protected classes under are not contingent on a diagnosed mental or physical condition, but rather on the basis of his sex, gender identity, and transgender status.

**Finally**, *Sanchez v. U.S. Airways*, 202 F.R.D. 131 (E.D. Pa. 2001), is far from "particularly instructive." (Opp. 13-15). There, the plaintiffs (plural) alleged they "suffered significant emotional distress related to Mr. Sanchez' termination." 202 F.R.D. at 133. But Mr. Conforti never alleged anything approaching "significant" emotional distress. The plaintiffs in *Sanchez*

also represented that “they had received treatment for mental and emotional distress caused by [Mr. Sanchez’s] termination from employment.” *Id.* Here, Mr. Conforti never alleged he sought mental health treatment in direct response to Defendants’ actions. *See Kennedy v. Municipality of Anchorage*, 305 P.3d 1284, 1289 (Alaska 2013) (distinguishing *Sanchez* and *Sarko*).<sup>3</sup>

**C. Mr. Conforti’s Mental Health History Is Not Relevant.**

Defendants would have the Court believe that Mr. Conforti’s past and unrelated history of mental health treatment is synonymous with the “garden variety” damages he claims in this case and therefore that he has put his entire mental health history at issue. Defendants are wrong. As explained in, *Koch v. Cox*, 489 F.3d 384 (D.C. Cir. 2007):

[A] plaintiff does not put his mental state in issue merely by acknowledging he suffers from depression, for which he is not seeking recompense; nor may a defendant overcome the privilege by putting the plaintiff’s mental state in issue.

*Id.* at 391. So too here, Defendants cannot place Mr. Conforti’s mental condition at issue by conflating his separate and distinct claim for “garden variety” emotional distress damages with his separate admission that he has “long suffered from depression and anxiety.” (Opp. 11-12).

Defendants are not the first to attempt such alchemy. *See, e.g., In re Sims*, 534 F.3d 117, 125-27 (2d Cir. 2008) (reversing prior ruling granting demand for all medical records after the plaintiff withdrew any claims for “‘non-garden variety’ emotional distress injuries,” as the plaintiff’s remaining claim that “he was upset as a result of an assault ... [is] not one which would warrant the broad disclosure sought by the defendants”). Here, because Mr. Conforti’s emotional distress is limited to what he experienced “as a result of [Defendants’ discrimination],” it is entirely distinct from any other purported mental or medical issues he may have experienced beforehand

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<sup>3</sup> To the extent Mr. Conforti has discussed the denial of the hysterectomy with any of his mental health providers, such discussions occurred as part of ongoing treatment that pre-dated this case and the facts at issue here. These therapy sessions were not incidental to Defendants’ actions and Mr. Conforti has never claimed as such.

and “would not warrant the broad disclosure sought by the defendants.” *Id.*

### III. Defendants’ Original Requests Are Unduly Burdensome.

Because there is no relevant basis to obtain documents or testimony from Mr. Conforti’s medical providers, the Subpoenas are inherently and unduly burdensome, interfering with one of the most sensitive relationships a person has. Review of each doctor demonstrates Defendants’ untimely fishing expedition for irrelevant information is far outweighed by the burden of their requests.

- **Dr. Joseph Vitale and NP Mary Vitale:** Dr. Joseph Vitale and Nurse Practitioner (“NP”) Mary Vitale are primary healthcare providers, *not* mental health care providers and as such, have no insight as to Mr. Conforti’s mental state at the time of this incident as alleged by Defendants. In their opposition, Defendants do not offer any justification these Subpoenas as it pertains to Dr. Vitale and NP Vitale.
- **Dr. Tang and APICHA Community Health Center:** Dr. Tang and Apicha Community Health Center (“APICHA”) are Mr. Conforti’s transition-related healthcare providers, having specifically prescribed him hormone replacement therapy to treat gender dysphoria under Dr. Tang’s practice as a licensed endocrinologist. In this case, Defendants’ have *never* contested that Mr. Conforti sought a hysterectomy as medically necessary treatment for gender dysphoria.
- **Dr. Haddad:** Dr. Haddad performed Mr. Conforti’s hysterectomy *after* Defendants’ refusal to do so. He is not a mental health practitioner and would have no knowledge of Mr. Conforti’s emotional state at the time of Defendants’ actions.<sup>4</sup>
- **Dr. Fitzgerald and Rissy Batista:** Dr. Fitzgerald began treating Mr. Conforti two years *after* this incident, and months after this case had been filed, and would have no insight as to Mr. Conforti’s mental condition at the time of this incident or soon thereafter. Similarly, deposing Ms. Batista, who served as Mr. Conforti’s therapist in treating his gender dysphoria, is unnecessary and oppressive because (i) Mr. Conforti’s gender dysphoria diagnosis is not at issue in this case and (ii) her mental health treatment is separate and distinct from the “garden variety” damages asserted here.

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<sup>4</sup> To the extent Defendants are willing to enter a stipulation as an alternative to deposing Dr. Haddad, it should have been offered to Mr. Conforti *months ago* during a meet and confer, and not, for the first time, in their opposition brief. Should the Court grant Defendants the ability to depose Dr. Haddad, to which Mr. Conforti objects, Mr. Conforti is willing to consider the proposed stipulation at such time.

**IV. Defendants’ New Discovery Requests for Additional Providers Are Unduly Burdensome And Based on False Premises.**

In a new twist, Defendants now for the first time request to take even *more* provider depositions (Opp. 12 n.2), arguing they first learned of the existence of Dr. Diana Vitale and Dr. Avery Katz at Mr. Conforti’s deposition. (Opp. 9). Not only is this false, but such discovery would be unduly burdensome. Defendants’ assertion that “it has recently come to light” that Mr. Conforti saw additional medical providers for limited medical care is, at best, misleading, as Defendants have long known about all these individuals. Further, the evidentiary value of these requests is far outweighed by the undue burden created by these new requests.

- **Dr. Diana Vitale:** Defendants not only knew about Dr. Diana Vitale from the medical records produced by Mr. Conforti (VITALE00060; VITALE000187), but also from *medical records from Dr. Diana Vitale that Defendants produced to Mr. Conforti* ( D000233-237). This should come as no surprise as Dr. Diana Vitale *appears to be an employee of Defendants*. See Diana Vitale, MD, *Our Doctors, St. Joseph’s Health*, <https://perma.cc/JW5U-C2UN>.<sup>5</sup> In fact, it is Defendants’ obligation to disclose any of Mr. Conforti’s records that are in Dr. Diana Vitale’s custody, possession, and control—something Mr. Conforti requested on May 17, 2017. (See Ex. 5 (Request No. 4)). Further, Dr. Diana Vitale has never treated Mr. Conforti. Mr. Conforti instead saw her for only one office visit and then never again. Yet even that minor interaction has compelled Defendants to demand to depose her as well.
- **Dr. Avery Katz:** Mr. Conforti produced medical records identifying Dr. Katz, a neurologist who treated Mr. Conforti for migraines, (BATISTA00043; VITALE000055; VITALE00202-203 (progress notes by Dr. Katz)), and indicating that Mr. Conforti received medication of which the “prescriber is a neurologist” and that he would “continue to see neurologist for RX mgmt.” (TANG00063). Dr. Katz did not provide Mr. Conforti with mental health treatment nor any treatment associated with his gender dysphoria. Not only did Defendants never request additional information or medical records from Mr. Conforti until after Mr. Conforti’s deposition, but Dr. Katz falls squarely outside the scope of medical providers agreed upon by the parties at their meet and confer on April 10, 2018. (Ex. 4 at 4). If anything, Defendants now raising the specter of deposing Dr. Katz is a fitting illustration of the unlimited and intrusive nature of their discovery tactics.

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<sup>5</sup> This fact is particularly awkward, given that Mr. Conforti learned only at the deposition of Dr. Brian Day—the surgeon who had agreed to perform the hysterectomy on Mr. Conforti at St. Joseph’s—that *he too* is Defendants’ employee. Defendants cannot have their cake and eat it too. Either the OB/GYNs at St. Joseph’s are employees of Defendants or they are not.

**V. The Court Should Uphold Mr. Conforti's AEO Designations.**

Finally, Defendants err in contesting Mr. Conforti's AEO designations. (Opp. 19-22).

*First*, the AEO designations were sparingly used for only the most sensitive information.

*Second*, Mr. Conforti does not object to the use of those materials with Defendants' purported consulting expert nor, if the Court allows the depositions to proceed, with the medical providers who created them. Mr. Conforti, however, objects to Defendants' plan to use of the AEO-designated materials with those who did not create said records. Defendants have proffered no reason for why such invasive tactics would be necessary, and their baseless speculation that Mr. Conforti "apparently hid" (Opp. 19) certain details about his life from his doctors is unsupported and entirely irrelevant.

*Third*, the AEO-designated records have nothing to do with the issues in this case. Courts routinely reject such transparent and pretextual attempts to harass your adverse party to obtain inadmissible and irrelevant evidence. *See, e.g., Cuthbertson v. Excel Indus., Inc.*, 179 F.R.D. 599, 603-04 (D. Kan. 1998) (subpoenas seeking records related to substance abuse were "harassing and embarrassing", particularly since they could not be used to "impeach the deponent's ability to perceive, recollect and testify").

*Fourth*, the fact that *one* outdated article written by Mr. Conforti years ago as a student is already public does not render his entire personal and medical history public or relevant. One would need to know Mr. Conforti's former name, something which is *not* public, to find the *one* public record to which Defendants refer. Moreover, Defendants' argument is a straw man, as the AEO-designated materials contain exceedingly more sensitive and private detailed information than the one article Defendants identify.

**CONCLUSION**

The Court should grant Mr. Conforti's Motions to Quash and for a Protective Order.

DATED: March 19, 2019

Respectfully submitted,

/s/Jaclyn M. Palmerson

Jaclyn M. Palmerson (N.J. Bar No. 209452016)

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI,

*Plaintiff,*

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,  
INC.; ST. JOSEPH'S HOSPITAL AND  
MEDICAL CENTER D/B/A ST. JOSEPH'S  
REGIONAL MEDICAL CENTER; and  
FATHER MARTIN D. ROONEY,

*Defendants.*

Case No. 2:17-cv-00050-CCC-CLW

**SUPPLEMENTAL DECLARATION  
OF JACLYN M. PALMERSON IN  
FURTHER SUPPORT OF MOTION  
TO QUASH SUBPOENAS AND FOR  
A PROTECTIVE ORDER**

I, **JACLYN M. PALMERSON**, of full age, hereby declare as follows:

1. I am an attorney at law of the State of New Jersey and a member in good standing of the bar of this Court. I am an associate of the firm of Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Jionni Conforti ("Mr. Conforti") in the above-captioned matter.

2. I submit this Supplemental Declaration on behalf of Mr. Conforti in further support of Mr. Conforti's Motion to Quash Subpoenas and for a Protective Order.

3. I have personal knowledge of the facts set forth herein or believe such facts to be true based upon information provided by knowledgeable persons.

4. Attached hereto as Exhibit 1 is a copy of Defendants' First Request for Production of Documents to Plaintiff, dated July 5, 2017.

5. Attached hereto as Exhibit 2 is a copy of Plaintiff Jionni Conforti's Responses and Objections to Defendants' First Request for Production of Documents, dated August 7, 2017.

6. Attached hereto as Exhibit 3 is a copy of a letter from Thomas F. Doherty, counsel for Defendants, to Thomas Barnes, counsel for Plaintiff, dated March 15, 2018.

7. Attached hereto as Exhibit 4 is a copy of a letter from Thomas L. Barnes, counsel for Plaintiff, to Thomas Doherty, counsel for Defendants, dated April 26, 2018.

8. Attached hereto as Exhibit 5 is a copy of Plaintiff's First Set of Requests for Production of Documents and Things to Defendants, dated May 17, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of March, 2019, in New York, New York.

*/s/ Jaclyn M. Palmerson*  
Jaclyn M. Palmerson



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**UNITED STATES DISTRICT COURT  
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FATHER MARTIN D. ROONEY,

Defendants.

Case No. 2:17-cv-00050-JLL-JAD

**DEFENDANTS' FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS  
TO PLAINTIFF**

TO: Christopher T. Cook, Esq.  
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New York, NY 10010-1601

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Lambda Legal Defense and Education Fund, Inc.  
120 Wall Street, 19<sup>th</sup> Floor  
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Attorneys for Plaintiff

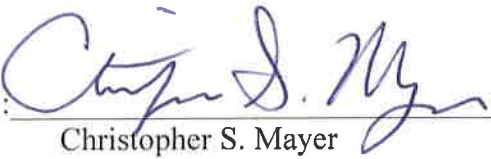
COUNSEL:

PLEASE TAKE NOTICE that, pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Jionni Conforti is requested and required to produce all documents set forth in Schedule A annexed hereto which are in his custody, control, or possession or available to him

and his counsel, agents, representatives, or associates.

PLEASE TAKE FURTHER NOTICE that all requested documents should be produced at the offices of McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, New Jersey, within the time prescribed by the Rules of Court.

McCARTER & ENGLISH, LLP  
Attorneys for Defendants

By:   
Christopher S. Mayer

Dated: July 5, 2017

## **SCHEDULE A**

### **DEFINITIONS**

1. The term “Document” or “Documents” is used in the broadest sense permitted by the Court Rules and means the original (or any copy when originals are not available) and any drafts or non-identical copies thereof, whether different from the original because of interlineation, receipt stamp, notation of copy sent or received or otherwise, of any book, pamphlet, periodical, letter, e-mail, text message, social media, report, note, memorandum, record, minutes, calendar or diary entry, transcript, study, compilation, analysis, tabulation, map, diagram, drawing, plan, picture, summary, working paper, chart, paper, graph index, spreadsheet, data sheet, data processing card, computer printout, summary of a computer printout, tape, contract, agreement, lease, ledger, journal, balance sheet, account, invoice, purchase order, receipt billing record, financial data, financial statement, file, diary, film, trip tickets, telex, teletype, telegram, expense vouchers, instructions, bulletins, reports and recordings (by any graphic, electronic, mechanical or other means) of telephone or other conversations, of interviews, or of conferences or other meetings, or any other writing or recording of information, however produced, recorded, maintained or reproduced, and including without limitation, any information contained in any computer or memory system, although not yet printed out, within the possession, custody or control of the defendant or any of his, directors, employees, attorneys, or other agents and/or representatives.

2. “Communication” means every oral or written manner of transmitting or receiving facts, information, opinions, and thoughts, including, but not limited to, any meetings, discussions, and telephone calls.

3. “You” or “Your” means Plaintiff Jionni Conforti, his representatives, and any

persons acting on his behalf.

4. “SJHMC” means Defendant St. Joseph’s Hospital and Medical Center, its parents, subsidiaries, affiliates, current and former officers, agents, employees, independent contractors, subcontractors, representatives and/or employees, and all persons who have acted or purported to have acted on its behalf.

5. “Defendants” mean SJHMC and Defendant St. Joseph’s Healthcare System, Inc.

6. This “Action” means the above-captioned lawsuit and your pending charge of discrimination with the U.S. Department of Health and Human Services Office for Civil Rights.

7. “Person” or “Persons” means natural persons, firms, proprietorships, associations, partnerships, corporations, and every other type of organization or entity.

8. “Concerning” means relating to, referring to, describing, evidencing, or constituting.

9. The word “relating” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing, reflecting or constituting.

10. “And” as well as “or” shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of the interrogatory all responses which might otherwise be construed to be outside its scope.

11. The terms “including” means including but not limited to.

12. The use of the singular shall include the plural and the use of the plural shall include the singular.

### **INSTRUCTIONS**

1. If any documents requested herein are withheld from production, please furnish a list containing a complete description of each document, including: (i) the date and number of

pages of the document; (ii) its title (if any); (iii) its subject matter; (iv) the identity of each attachment or appendix to the document; (v) the name and identification of each person to whom it is addressed; (vi) the name and identification of each person to whom the document was distributed, shown or explained; (viii) the name and identification of the person or persons by whom it was written; (ix) its present custodian; and (x) the ground or grounds upon which it is being withheld. If a privilege is asserted as a ground for non-production, set forth the factual basis for the claim of privilege in sufficient detail so as to permit the court to adjudicate the validity of the claim of privilege.

2. In the event that any document requested herein has been destroyed or discarded, identify each such document by stating: (i) any addressor or addressee; (ii) the addresses of any indicated or blind copies; (iii) the date, subject matter, and number of pages of the document; (iv) the identity of any attachments or appendices to the document; (v) all persons to whom the document was distributed, shown, or explained; (vi) its date of destruction or discard, manner of destruction or discard and reason for destruction or discard; and (vii) the persons authorizing and carrying out such destruction or discard.

**DOCUMENTS DEMANDED**

1. All Communications between You and SJHMC.
2. All Communications between You and Dr. Day.
3. All Documents related to any medical treatments you have ever sought or received at SJHMC.
4. All Communications between You (including Your counsel) and the U.S. Department of Health and Human Services Office for Civil Rights regarding the OCR Complaint referenced in Paragraphs 80-81 of the Complaint.
5. All Documents provided by You or Your counsel to the U.S. Department of Health and Human Services Office for Civil Rights.
6. All Communications by You with any health insurance carrier regarding coverage for any procedure or treatment relating to gender dysphoria, gender transition, or sex reassignment.
7. All Communications by You or Your counsel with any reporter concerning this Action.
8. All Documents relating to any agreement between You and any publishing company to write an article or book concerning gender transition, sex reassignment and/or Your experience with same.
9. All copies of drafts, manuscripts, transcriptions, outlines, proofs, and final versions of any book or article written by You or a ghost writer on your behalf concerning gender transition, sex reassignment and/or Your experience with same.
10. All Documents relating to Your allegation in paragraph 76 of the Complaint that “in 2009, Dr. Day performed a hysterectomy for an acquaintance of Jionni, a cisgender woman, at SJRMC Paterson.”

11. All Documents relating to Your allegation in paragraph 76 of the Complaint that “Dr. Day and other surgeons routinely perform laparoscopic hysterectomies and direct sterilizations at SJRMC.”

12. All Documents relating to Your use of any social media websites (for example, Facebook, LinkedIn, or Twitter) to discuss or post any information related to (i) your claims in this Action, or (ii) gender transition, sex reassignment and/or Your experience with same. Include within your response screen shots of status updates, profiles, messages, photos, videos, wall comments, posts, groups joined, applications and blog entries.

13. All Documents concerning any damage or injury You are claiming in this Action.

14. All Documents upon which You intend to rely in proving entitlement to the relief and damages demanded in the Complaint.

15. All Documents related to the diagnosis of or medical treatments recommend or prescribed to you for gender dysphoria, gender transition, or sex reassignment.

16. All Documents related to any medical treatments You have sought, at any time, for gender dysphoria, gender transition, or sex reassignment.

17. All Documents relating to a hysterectomy, if any, that was performed on You after June 16, 2015, and then fill out and execute the release form annexed as Exhibit A to authorize the release of records pertaining to such procedure by the hospital or other medical facility where the procedure was performed.

18. All Documents related to any medical treatments You sought during the period of January 1, 2007 until the date of your response to this demand for production of documents, and supplement Your response up to the date of trial. To the extent You do not possess a complete set of such documents, please provide the responsive documents that You do possess and then

fill out and execute the release forms annexed as Exhibit A to authorize the release of your medical records from each health care provider. Return the executed releases to counsel for Defendants.

19. All Documents related to any psychiatric or psychological treatments You sought for the period of January 1, 2007 until the date of your response to this demand for production of documents, and supplement Your response up to the date of trial. To the extent You do not possess a complete set of such documents, please provide the responsive documents that You do possess and then fill out and execute the release forms annexed as Exhibit B to authorize the release of your medical records from each health care provider. Return the executed releases to counsel for Defendants.

20. Any and all non-privileged documents relating to other lawsuits or charges filed by You, or to which You were or are a party, from January 1, 2007 to the present.

21. Any and all diaries, memos, calendars, schedule journals (e.g., Daytimer), notes, or other documents, whether electronic or hardcopy, maintained by You from January 1, 2015 up until the present on which You (individually or in conjunction with others) referenced doctor's appointments, scheduling procedures, or any information relevant to this Action.

22. Any and all reports prepared in whole or in part by each expert retained by You in connection with each subject matter about which the expert is expected to testify.

23. All Documents that memorialize, reflect, relate, or refer to any admissions and/or declarations against interest made by any party or witness.

24. All Documents to which You refer in the Complaint.

25. All Documents upon which You intend to rely in proving the allegations set forth in the Complaint.



26. All Documents identified or referenced in Your Initial Disclosures pursuant to Rule 26.

27. All Documents requested in Defendants' interrogatories or used in preparing your responses to Defendants' interrogatories.



**HIPAA COMPLIANT AUTHORIZATION FOR THE RELEASE OF MEDICAL RECORDS PURSUANT TO 45 C.F.R. §164.508**

THIS AUTHORIZATION MUST BE FULLY COMPLETED, SIGNED, AND DATED.

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

RE: Name: Jionni Conforti, formerly Crystal Conforth  
SS#: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dates of Service: Any and all dates of service.

I authorize the disclosure of all protected health information and I expressly request that the designated records custodian of all covered entities under HIPAA identified above disclose full and complete protected health information including the following:

**Any and all documents, writings, notes, charts, medical reports, medical records, health information, or other papers of any type with respect to the treatment and care of the patient identified above or copies thereof. This shall include but is not limited to medical records, reports, office notes, progress notes, nurses' notes, doctors' notes, doctors' orders, lab reports, radiographic films (including X-ray films, CT scans, MRI films), radiology reports, tissue samples, slides and blocks, consultations, medication orders, medication charts, and any other documents or other health information referring or relating to any treatment, examination, consultation, confinement, diagnosis, and/or evaluation of the patient identified above.**

Information about diagnosis or treatment for alcohol/substance abuse and HIV/AIDS may be disclosed as follows: (check all that apply)

\_\_\_ Yes, disclose HIV/AIDS information. OR \_\_\_ No, do NOT disclose HIV/AIDS information.  
\_\_\_ Yes, disclose alcohol/drug abuse information. OR \_\_\_ No, do NOT disclose alcohol/drug abuse information.

This protected health information is disclosed for the following purposes:

- This disclosure is made at my request in compliance with 45 CFR 164.508(c)(1)(iv).
- My lawsuit filed in the United States District Court for the District of New Jersey, *Jionni Conforti v. St. Joseph's Healthcare System, Inc. et al.*, Civil Action No. 2:17-00050.

You are authorized to release the above records to the following representative of the defendants in the above-entitled matter who have agreed to pay reasonable charges made by you to supply true and correct copies of such records:

Christopher S. Mayer, Esq.  
McCarter & English, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, NJ 07102  
Attorneys for Defendants

This authorization does not apply to psychotherapy notes.

I acknowledge that I have the right to revoke this authorization, in writing, by sending written notification to you at the above referenced address. However, I understand that any actions already taken in reliance on this authorization cannot be reversed, and my revocation will not affect those actions.

I acknowledge the potential for information disclosed pursuant to this authorization to be subject to redisclosure by the recipient and no longer be protected under HIPAA privacy rules.

I understand that the covered entity to whom this authorization is directed may not condition treatment, payment, enrollment or eligibility benefits on whether or not I sign the authorization, unless a condition set forth at 45 CFR 164.508(b)(4) applies.

Any facsimile, copy or photocopy of the authorization shall authorize you to release the records herein.

This authorization shall be in force and effect until:

Date: \_\_\_\_\_

Event (describe): The conclusion of the above-described lawsuit, including any appeals.

\_\_\_\_\_  
**Signature of Patient or Personal Representative**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Name of Patient or Personal Representative

\_\_\_\_\_  
Description of Personal Representative's Authority to Sign for Patient (attach documents which show authority)

\_\_\_\_\_  
**Witness signature**

\_\_\_\_\_  
Dated:

**McCARTER & ENGLISH, LLP**

100 Mulberry Street  
Four Gateway Center  
Newark, New Jersey 07102  
(973) 622-4444  
Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JIONNI CONFORTI,

Plaintiff,

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,  
INC.; ST. JOSEPH'S HOSPITAL AND  
MEDICAL CENTER D/B/A ST. JOSEPH'S  
REGIONAL MEDICAL CENTER; and  
FATHER MARTIN D. ROONEY,

Defendants.

Case No. 2:17-cv-00050-JLL-JAD

**CERTIFICATION**

\_\_\_\_\_, of full age, hereby certifies as follows:

1. The attached is a true copy of the original records pertaining to the treatment of Jionni Conforti, formerly Crystal Conforth, by \_\_\_\_\_.
2. The annexed records were made in the ordinary course of business, such records are kept as part of regularly conducted business activities, and it is our regular practice to keep such records.
3. The records were made at the time of the act, event, condition, opinion or diagnoses reported therein by a person with actual knowledge of the act, event, condition, opinion or diagnosis or from information supplied by such a person.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

---

Signature

---

Print Name and Title

Dated: \_\_\_\_\_



**HIPAA COMPLIANT AUTHORIZATION FOR THE RELEASE OF PSYCHOTHERAPY**  
**NOTES PURSUANT TO 45 C.F.R. §164.508(a)(2)**

THIS AUTHORIZATION MUST BE FULLY COMPLETED, SIGNED, AND DATED.

**TO:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RE:** Name: Jionni Conforti, formerly Crystal Conforth  
SS#: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dates of Service: Any and all dates of service.

I expressly request that the designated records custodian of all covered entities under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") identified above disclose full and complete "psychotherapy notes" as defined in 45 CFR 164.501, as the same may be amended from time to time.

This protected health information is disclosed for the following purposes (check box and provide specific information where indicated):

- This disclosure is made at my request in compliance with 45 CFR 164.508(c)(1)(iv).
- My lawsuit filed in the United States District Court for the District of New Jersey, *Jionni Conforti v. St. Joseph's Healthcare System, Inc. et al.*, Civil Action No. 2:17-00050.
- Other (describe) \_\_\_\_\_

You are authorized to release the above records to the following representatives of defendants in the above-entitled matter who have agreed to pay reasonable charges made by you to supply copies of such records:

Christopher S. Mayer, Esq.  
McCarter & English, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, NJ 07102  
Attorneys for Defendants

I acknowledge that I have the right to revoke this authorization, in writing, by sending written notification to you at the above referenced address. However, I understand that any actions already taken in reliance on this authorization cannot be reversed, and my revocation will not affect those actions.



I acknowledge the potential for information disclosed pursuant to this authorization to be subject to redisclosure by the recipient and no longer be protected under HIPAA privacy rules.

I understand that the covered entity to whom this authorization is directed may not condition treatment, payment, enrollment or eligibility benefits on whether or not I sign the authorization, unless a condition set forth at 45 CFR 164.508(b)(4) applies.

Any facsimile, copy or photocopy of the authorization shall authorize you to release the records herein.

This authorization shall be in force and effect until:

Date: \_\_\_\_\_

Event (describe): The conclusion of the above-described lawsuit, including any appeals.

---

**Signature of Patient or Personal Representative**

---

Dated

---

Name of Patient or Personal Representative

---

Description of Personal Representative's Authority to Sign for Patient (attach documents which show authority)

---

**Witness signature**

---

Dated:

**McCARTER & ENGLISH, LLP**

100 Mulberry Street  
Four Gateway Center  
Newark, New Jersey 07102  
(973) 622-4444  
Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JIONNI CONFORTI,

Plaintiff,

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,  
INC.; ST. JOSEPH'S HOSPITAL AND  
MEDICAL CENTER D/B/A ST. JOSEPH'S  
REGIONAL MEDICAL CENTER; and  
FATHER MARTIN D. ROONEY,

Defendants.

Case No. 2:17-cv-00050-JLL-JAD

**CERTIFICATION**

\_\_\_\_\_, of full age, hereby certifies as follows:

1. The attached is a true copy of the original records pertaining to the treatment of Jionni Conforti, formerly Crystal Conforth, by \_\_\_\_\_.
2. The annexed records were made in the ordinary course of business, such records are kept as part of regularly conducted business activities, and it is our regular practice to keep such records.
3. The records were made at the time of the act, event, condition, opinion or diagnoses reported therein by a person with actual knowledge of the act, event, condition, opinion or diagnosis or from information supplied by such a person.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

Dated: \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

JIONNI CONFORTI,

*Plaintiff,*

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,  
INC.; ST. JOSEPH'S HOSPITAL AND  
MEDICAL CENTER D/B/A ST. JOSEPH'S  
REGIONAL MEDICAL CENTER; and  
FATHER MARTIN D. ROONEY,

*Defendants.*

Case No. 2:17-cv-00050-JLL-CLW

**PLAINTIFF JIONNI CONFORTI'S RESPONSES AND OBJECTIONS TO  
DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the District of New Jersey (the "Local Rules"), Plaintiff Jionni Conforti ("Plaintiff" or "Mr. Conforti") hereby provides responses and objections (the "Responses" and each a "Response") to Defendants' First Request for Production of Documents, dated July 5, 2017 (the "Requests" and each a "Request"). Mr. Conforti's Responses to the Requests reflect only the current state of his knowledge or information regarding the documents Defendants have requested. Further investigation may identify additional facts or information that could lead to additions to and/or changes to these Responses. Mr. Conforti's Responses are given without prejudice to his right to provide subsequent relevant information or to add, modify, supplement, or otherwise change or amend his Responses as new information is obtained, as legal determinations are made by the Court, or because the matter is pending further investigation and discovery. The information contained in Mr. Conforti's Responses is also subject to correction for omissions or errors.

Any Response to any Request indicating that Mr. Conforti will produce responsive documents shall not be construed as an admission that such responsive documents exist. Such Responses indicate only that Mr. Conforti will make a reasonable search for responsive documents and will produce responsive, non-privileged documents identified in that search. By responding to the Requests, Mr. Conforti does not admit to Defendants' characterizations of any documents, facts, theories, or conclusions, nor does Mr. Conforti admit that the information provided in response to the Requests reflects any fact, characterization, or conclusion. Nothing contained in any Response herein shall be deemed to be an admission, concession, or waiver by Mr. Conforti as to the relevance, materiality, or admissibility of any information or subject matter.

### **GENERAL OBJECTIONS**

1. Mr. Conforti construes the Requests to require Mr. Conforti to conduct a reasonable search. Mr. Conforti expressly reserves the right to not search for, review, or produce documents if, after further investigation, he determines that the burden of doing so exceeds the benefit of producing such documents.

2. Mr. Conforti objects to the Requests to the extent they seek documents which are protected by the attorney-client privilege, the attorney work product privilege, by any other privilege provided for by the Federal Rules of Evidence or the Local Rules, or by any other applicable rule, law, or immunity.

3. Mr. Conforti objects to the Requests on the grounds and to the extent that they impose or can be construed to impose burdens on Mr. Conforti beyond what is required by the Federal Rules of Civil Procedure, the Local Rules, or any other applicable rule or law.

4. Mr. Conforti objects to the Requests on the grounds and to the extent that they are vague and ambiguous, overbroad, seek information that is not relevant to a claim or defense of any

party to this action, are not reasonably calculated to lead to the discovery of evidence admissible in this action, are unduly burdensome or seek information available from a more convenient source, or are otherwise beyond the scope of permissible discovery in this action.

5. Mr. Conforti objects to the Requests to the extent that they seek the production of information or documents already in the possession, custody, or control of the Defendants or that are equally available to the Defendants from sources other than Mr. Conforti, including publicly available sources.

6. Mr. Conforti objects to the Requests to the extent that they seek the production of “all documents” pertaining to individuals or entities without limitation as to scope of the Request or its subject-matter.

7. Mr. Conforti objects to the Requests to the extent that they seek discovery or sensitive and non-public personal information that is irrelevant to this action.

8. Mr. Conforti objects to the time period specified for the Requests on the grounds that it is overbroad and unduly burdensome and is not reasonably calculated to lead to the discovery of evidence admissible in this action, or is otherwise beyond the scope of permissible discovery. Mr. Conforti is prepared to meet and confer with Defendants concerning an appropriate time period for the Requests.

9. Mr. Conforti objects to the definition of “Action” in the Requests to the extent it conflates the above-captioned lawsuit and Mr. Conforti’s complaint filed with the U.S. Department of Health and Human Services.

10. Mr. Conforti objects to the definition of “You” and “Your” in the Requests to the extent it extends to Mr. Conforti’s counsel in this action or in the civil rights administrative complaint filed with the U.S. Department of Health and Human Services Office for Civil Rights

(“OCR”) against Defendants (the “OCR Complaint”). Consistent with the Requests set forth below, Mr. Conforti will only construe a Request to apply to Mr. Conforti’s counsel where so expressly stated.

11. Mr. Conforti reserves all objections to the admissibility at trial of any document provided pursuant to the Requests, including, without limitation, all objections on the grounds that such documents are privileged, not authentic, not competent, or that the information contained therein is not relevant or material to this action.

### **SPECIFIC OBJECTIONS AND RESPONSES**

#### **REQUEST NO. 1**

**All Communications between You and SJHMC.**

#### **RESPONSE TO REQUEST NO. 1:**

Mr. Conforti objects to this Request as overbroad in that it seeks communications not relevant to Mr. Conforti’s claims of discrimination. Applying this objection, Mr. Conforti will produce non-privileged documents responsive to this Request that relate to any hysterectomy sought and/or performed in connection with his gender confirmation, including his attempts to schedule a hysterectomy at SJHMC, consistent with his obligations under the Federal Rules of Civil Procedure.

#### **REQUEST NO. 2**

**All Communications between You and Dr. Day.**

#### **RESPONSE TO REQUEST NO. 2:**

Mr. Conforti objects to this Request as overbroad in that it seeks communications not relevant to Mr. Conforti’s claims of discrimination. Applying this objection, Mr. Conforti will produce non-privileged communications responsive to this Request that relate to any hysterectomy

sought and/or performed in connection with his gender confirmation, including his attempts to schedule a hysterectomy at SJHMC, consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 3**

**All Documents related to any medical treatments you have ever sought or received at SJHMC.**

**RESPONSE TO REQUEST NO. 3:**

Mr. Conforti objects to this Request as seeking the production of documents already in the possession, custody, or control of the Defendants or equally available to the Defendants from sources other than Mr. Conforti, including publicly available sources. Mr. Conforti further objects to this Request to the extent that it is overbroad in that it seeks Documents not relevant to Mr. Conforti's claims of discrimination. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying these objections, Mr. Conforti will produce non-privileged documents responsive to this Request that relate to any hysterectomy sought and/or performed in connection with his gender confirmation, including his attempts to schedule a hysterectomy at SJHMC, consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 4**

**All Communications between You (including Your counsel) and the U.S. Department of Health and Human Services Office for Civil Rights regarding the OCR Complaint referenced in Paragraphs 80-81 of the Complaint.**

**RESPONSE TO REQUEST NO. 4:**

Mr. Conforti objects to this Request on the grounds that the term "counsel" is vague and not adequately defined. In responding to this Request, Mr. Conforti will construe the term "counsel" to mean an attorney retained by Mr. Conforti for the purpose of rendering to him



professional legal services. Applying this objection, Mr. Conforti will produce non-privileged communications between the OCR and his counsel that were made in support of the OCR Complaint and which are responsive to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 5**

**All Documents provided by You or Your counsel to the U.S. Department of Health and Human Services Office for Civil Rights.**

**RESPONSE TO REQUEST NO. 5:**

Mr. Conforti objects to this Request on the grounds that the terms “provided” and “counsel” are vague and not adequately defined. In responding to this Request, Mr. Conforti will construe “provided” to seek all documents which were actually submitted or sent to the Office for Civil Rights by Mr. Conforti or his counsel, and the term “counsel” to mean an attorney retained by Mr. Conforti for the purpose of rendering to him professional legal services. Applying these objections, Mr. Conforti will produce responsive, non-privileged documents which were provided to the OCR in support of the OCR Complaint either by Mr. Conforti or his counsel, consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 6**

**All Communications by You with any health insurance carrier regarding coverage for any procedure or treatment relating to gender dysphoria, gender transition, or sex reassignment.**

**RESPONSE TO REQUEST NO. 6:**

Mr. Conforti objects to this Request on the ground that it seeks documents that are not relevant to the claims and defenses involved in this proceeding. Insurance coverage has no bearing on Defendants’ refusal to treat Mr. Conforti. Mr. Conforti is willing to meet and confer with Defendants to clarify the scope of this Request.

**REQUEST NO. 7**

**All Communications by You or Your counsel with any reporter concerning this Action.**

**RESPONSE TO REQUEST NO. 7:**

Mr. Conforti objects to this Request on the ground that the terms “reporter” and “counsel” are vague, overbroad, and not adequately defined. In responding to this Request, Mr. Conforti will construe the term “reporter” to mean a journalist or news reporter associated with a news media outlet, and the term “counsel” to mean an attorney retained by Mr. Conforti for the purpose of rendering to him professional legal services in this action. Mr. Conforti further objects to this Request to the extent it seeks communications from his counsel that occurred when counsel was not acting on Mr. Conforti’s behalf as his agent. Applying these objections, Mr. Conforti will produce responsive, non-privileged communications concerning this action between him or his counsel in this action and a reporter, consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 8**

**All Documents relating to any agreement between You and any publishing company to write an article or book concerning gender transition, sex reassignment and/or Your experience with same.**

**RESPONSE TO REQUEST NO. 8:**

Mr. Conforti objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Mr. Conforti will produce non-privileged documents responsive to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 9**

**All copies of drafts, manuscripts, transcriptions, outlines, proofs, and final versions of any book or article written by You or a ghost writer on your behalf concerning gender transition, sex reassignment and/or Your experience with same.**

**RESPONSE TO REQUEST NO. 9:**

Mr. Conforti states that no such documents exist.

**REQUEST NO. 10**

**All Documents relating to Your allegation in paragraph 76 of the Complaint that “in 2009, Dr. Day performed a hysterectomy for an acquaintance of Jionni, a cisgender woman, at SJRMC Paterson.”**

**RESPONSE TO REQUEST NO. 10:**

Mr. Conforti objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying this objection, Mr. Conforti will produce non-privileged documents responsive to this Request, consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 11**

**All Documents relating to Your allegation in paragraph 76 of the Complaint that “Dr. Day and other surgeons routinely perform laparoscopic hysterectomies and direct sterilizations at SJRMC.”**

**RESPONSE TO REQUEST NO. 11:**

Given that this Request seeks documents relating to procedures performed by doctors employed by Defendants, Mr. Conforti objects to this Request as seeking the production of documents already in the possession, custody, or control of Defendants or equally available to Defendants from sources other than Mr. Conforti. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying these objections, Mr. Conforti will produce non-privileged

documents responsive to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 12**

**All Documents relating to Your use of any social media websites (for example, Facebook, LinkedIn, or Twitter) to discuss or post any information related to (i) your claims in this action, or (ii) gender transition, sex reassignment and/or Your experience with same. Include within your response screen shots of status updates, profiles, messages, photos, videos, wall comments, posts, groups joined, applications and blog entries.**

**RESPONSE TO REQUEST NO. 13:**

Mr. Conforti objects to this Request as overbroad, vague, and overly burdensome in seeking “all” documents relating to “gender transition” and “Your experience with same,” regardless of whether they are relevant or relate to the claims or defenses at issue in this action. The Request fails to adequately define what is meant by “status updates,” “wall comments,” “groups,” and “applications.” Mr. Conforti will construe these terms as commonly understood in light of the social media website from which responsive information, if any, is collected. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying these objections, Mr. Conforti will produce non-privileged documents responsive to this Request that relate to his claims in this action or any hysterectomy sought and/or performed in connection with his gender confirmation, consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 13**

**All Documents concerning any damage or injury You are claiming in this action.**

**RESPONSE TO REQUEST NO. 13:**

Mr. Conforti objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying this objection, Mr.

Conforti will produce responsive, non-privileged documents in response to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 14**

**All Documents upon which You intend to rely in proving entitlement to the relief and damages demanded in the Complaint.**

**RESPONSE TO REQUEST NO. 14:**

Mr. Conforti objects to this Request on the ground that it is overbroad and vaguely worded. The Request fails to define the term “entitlement.” To the extent this Request seeks documents demonstrating that Mr. Conforti has been damaged by Defendants’ actions, Mr. Conforti objects to this Request as duplicative of Request No. 13. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying these objections, Mr. Conforti will produce responsive, non-privileged documents in response to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 15**

**All Documents related to the diagnosis of or medical treatments recommended or prescribed to you for gender dysphoria, gender transition, or sex reassignment.**

**RESPONSE NO. 15:**

Mr. Conforti objects to this Request as overbroad in seeking “all” documents, regardless of whether they are relevant or relate to the claims or defenses at issue in this action. Documents concerning medical treatments other than the hysterectomy sought and/or performed in connection with his gender confirmation are not relevant to the claims and defenses involved in this proceeding, and Mr. Conforti objects to this Request to the extent Defendants seek such documents. Mr. Conforti further objects to this Request as seeking communications subject to the

attorney-client privilege and documents constituting attorney work product. Applying these objections, Mr. Conforti will produce responsive, non-privileged documents consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 16**

**All Documents related to any medical treatments You have sought, at any time, for gender dysphoria, gender transition, or sex reassignment.**

**RESPONSE TO REQUEST NO. 16:**

Mr. Conforti objects to this Request as overbroad in seeking “all” documents, regardless of whether they are relevant or relate to the claims or defenses at issue in this action. Documents concerning medical treatments other than the hysterectomy sought and/or performed in connection with his gender confirmation are not relevant to the claims and defenses involved in this proceeding, and Mr. Conforti objects to this Request to the extent Defendants seek such documents. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying these objections, Mr. Conforti will produce responsive, non-privileged documents consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 17**

**All Documents relating to a hysterectomy, if any, that was performed on You after June 16, 2015, and then fill out and execute the release form annexed as Exhibit A to authorize the release of records pertaining to such procedure by the hospital or other medical facility where the procedure was performed.**

**RESPONSE TO REQUEST NO. 17:**

Mr. Conforti objects to this Request as overbroad and as seeking documents not relevant to the claims and defenses in this proceeding to the extent it seeks documents beyond those necessary to establish that such hysterectomy occurred. Mr. Conforti further objects to the form

of the purposed authorization form described as “Exhibit A” as overbroad and seeking the release of information not relevant to the claims and defenses involved in this proceeding. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Mr. Conforti is willing to meet and confer with Defendants to clarify the scope of this Request and to negotiate an acceptable authorization form.

**REQUEST NO. 18**

**All Documents related to any medical treatments You sought during the period of January 1, 2007 until the date of your response to this demand for production of documents, and supplement Your response up to the date of trial. To the extent You do not possess a complete set of such documents, please provide the responsive documents that You do possess and then fill out and execute the release forms annexed as Exhibit A to authorize the release of your medical records from each health care provider. Return the executed releases to counsel for Defendants.**

**RESPONSE TO REQUEST NO. 18:**

Mr. Conforti objects to this Request as overbroad and unduly burdensome. The Request seeks documents relating to “any” medical treatment, which Mr. Conforti understands to include, as one example, treatment for the common cold. Mr. Conforti further objects to the more than ten-year period identified in this Request as overbroad. Mr. Conforti further objects to the form of the purposed release described as “Exhibit A” as overbroad and seeking the release of documents not relevant to the claims and defenses involved in this proceeding, including, in part, “[a]ny and all documents, writings, notes, charts, medical reports, medical records, health information, or other papers of any type . . . referring or relating to any treatment, examination, consultation, confinement, diagnosis, and/or evaluation of the patient identified above.” Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and

documents constituting attorney work product. Mr. Conforti is willing to meet and confer with Defendants to clarify the scope of this Request and to negotiate an acceptable release form.

**REQUEST NO. 19**

**All Documents related to any psychiatric or psychological treatments You sought for the period of January 1, 2007 until the date of your response to this demand for production of documents, and supplement Your response up to the date of trial. To the extent You do not possess a complete set of such documents, please provide the responsive documents that You do possess and then fill out and execute the release forms annexed as Exhibit B to authorize the release of your medical records from each health care provider. Return the executed releases to counsel for Defendants.**

**RESPONSE TO REQUEST NO. 19:**

Mr. Conforti objects to this Request as overbroad. The Request seeks documents relating to “any” psychiatric or psychological treatments, regardless of whether they are relevant or relate to the claims or defenses at issue in this action. Mr. Conforti further objects to the more than ten-year period identified in this Request as overbroad. Mr. Conforti further objects to the form of the purposed release described as “Exhibit B” as overbroad and seeking the release of documents not relevant to the claims and defenses involved in this proceeding. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Mr. Conforti is willing to meet and confer with Defendants to clarify the scope of this Request and to negotiate an acceptable release form.

**REQUEST NO. 20**

**Any and all non-privileged documents relating to other lawsuits or charges filed by You, or to which You were or are a party, from January 1, 2007 to the present.**

**RESPONSE TO REQUEST NO. 20:**

Mr. Conforti objects to this Request on the grounds that it is overbroad and too vaguely worded to understand what materials are sought. The Request fails to define what is meant by “lawsuits or charges.” Mr. Conforti shall construe “lawsuits or charges” to mean any civil or



criminal actions involving Mr. Conforti. Mr. Conforti objects to this Request to the extent it seeks documents from such “lawsuits or charges” on the grounds that such documents are not relevant to the claims and defenses involved in this proceeding. To the extent this Request seeks documents from the OCR proceeding, Mr. Conforti objects to this Request as duplicative of Request Nos. 4 and 5. Mr. Conforti is willing to meet and confer with Defendants regarding the scope of this Request and why Defendants believe such information to be relevant to this action.

**REQUEST NO. 21**

**Any and all diaries, memos, calendars, schedule journals (e.g., Daytimer), notes, or other documents, whether electronic or hardcopy, maintained by You from January 1, 2015 up until the present on which You (individually or in conjunction with others) referenced doctor’s appointments, scheduling procedures, or any information relevant to this action.**

**RESPONSE TO REQUEST NO. 21:**

Mr. Conforti objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Applying this objection, Mr. Conforti will produce responsive, non-privileged documents relevant to claims or defenses in this action in response to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 22**

**Any and all reports prepared in whole or in part by each expert retained by You in connection with each subject matter about which the expert is expected to testify.**

**RESPONSE TO REQUEST NO. 22:**

Mr. Conforti objects to this Request as a premature attempt to collect expert discovery, and will not produce documents in response to this Request at this time. Mr. Conforti reserves his right to withhold any documents or communications related to the preparation of any expert report subject to any applicable privilege or immunity if and when expert discovery is undertaken.

**REQUEST NO. 23**

**All Documents that memorialize, reflect, relate, or refer to any admissions and/or declarations against interest made by any party or witness.**

**RESPONSE TO REQUEST NO. 23:**

Mr. Conforti objects to this Request as overbroad and vaguely worded. The Request fails to adequately define what is meant by “admission” and/or “declarations against interest.” Mr. Conforti further objects to this Request to the extent that it is not limited to any subject matter, but merely requests “admissions” and “declarations against interest.” Mr. Conforti further objects to this Request in that it does not sufficiently identify a requested category of “Documents” as a factual matter, but instead demands a legal assessment of an unspecified category of Documents. Mr. Conforti further objects to this Request in that whether a Document memorializes, reflects, relates, or refers to an “admission” or “declaration against interest” calls for a legal conclusion. Mr. Conforti further objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Mr. Conforti is willing to meet and confer with Defendants to clarify the scope of this Request.

**REQUEST NO. 24**

**All Documents to which You refer in the Complaint.**

**RESPONSE TO REQUEST NO. 24:**

Mr. Conforti will produce responsive, non-privileged documents in response to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 25**

**All Documents upon which You intend to rely in proving the allegations set forth in the Complaint.**

**RESPONSE TO REQUEST NO. 25:**

Mr. Conforti objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Mr. Conforti objects to this Request as duplicative of Defendants' other Requests, including Request Nos. 13, 14, 24, and 26. Applying these objections, Mr. Conforti will produce responsive, non-privileged documents in response to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 26**

**All Documents identified or referenced in Your Initial Disclosures pursuant to Rule 26.**

**RESPONSE TO REQUEST NO. 26:**

Mr. Conforti will produce responsive, non-privileged documents in response to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

**REQUEST NO. 27**


**All Documents requested in Defendants' interrogatories or used in preparing your responses to Defendants' interrogatories.**

**RESPONSE TO REQUEST NO. 27:**

Mr. Conforti objects to this Request as seeking communications subject to the attorney-client privilege and documents constituting attorney work product. Mr. Conforti further objects to this Request to the extent it attempts to expand any right or obligation under Federal Rule of Civil Procedure 33. Applying these objections, Mr. Conforti will produce non-privileged documents responsive to this Request consistent with his obligations under the Federal Rules of Civil Procedure.

DATED: August 7, 2017

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By:   
\_\_\_\_\_  
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*Attorneys for Plaintiff Jionni Conforti*

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of Plaintiff Jionni Conforti's Responses and Objections to Defendants' First Request for Production of Documents on August 7, 2017, on the following via electronic mail:

Christopher S. Mayer, Esq.  
Thomas F. Doherty, Esq.  
McCarter & English, LLP  
100 Mulberry Street  
Four Gateway Center  
Newark, New Jersey 07102



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Christopher T. Cook



March 15, 2018

**VIA EMAIL**

Thomas Barnes, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010-1601

Thomas F. Doherty  
Partner  
T. 973-639-2078  
F. 973-297-6612  
tdoherty@mccarter.com

Re: Jionni Conforti v. St. Joseph's Healthcare System, Inc., et al.

Dear Mr. Barnes:

As depositions in this case will be starting soon and because defendants intend to apply to have Mr. Conforti undergo an examination pursuant to Fed. R. Civ. P. 35, we are writing to request that plaintiff supplement and/or clarify his prior responses to defendants' First Request for Production of Documents ("RPD") and Interrogatories as outlined below:

As an initial matter, plaintiff has interposed a number of introductory "General Objections" in his Answers to Interrogatories and responses to the RPD, including objections based upon (i) work product and attorney-client privilege, (ii) claimed annoyance, embarrassment, oppression, undue burden or expense, (iii) the assertion that the discovery demands seek "sensitive and non-public personal information," and (iv) the contention that the discovery sought constitutes an "unwarranted invasion of any affected person's or non-party's constitutional, statutory, or common law rights of privacy and confidentiality." Please advise whether plaintiff has withheld any otherwise responsive information or documentation based on any of the aforementioned objections (see Fed. R. Civ. P. 34(b)(2)(C) and Local Civil Rules 33.1 and 34.1) and, if so, please provide a detailed log to enable defendants to evaluate the bona fides of any such objections and/or privileges.

Similarly, virtually all of plaintiff's responses to the RPD state that plaintiff "will produce non-privileged documents responsive to this Request" or "will produce responsive, non-privileged documents in response to the Request" without indicating by bates number which specific documents are alleged to be responsive to each individualized request. See Fed. R. Civ. P. 34(b)(E)(i). Please identify which documents produced by plaintiff are responsive to each category of the RPD. If the use of the word "will" means that responsive documents exist but have yet to be produced, please produce those documents as soon as possible.

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As a follow up to your February 23<sup>rd</sup> email to Chris Mayer – wherein you state that “Mr. Conforti has provided all responsive, non-privileged documents from his email accounts, social media accounts, and personal files” – please identify the email accounts and social media accounts that were searched, as it appears that plaintiff has produced nothing from his Instagram account or his jionniconforti@outlook.com email account.

With respect to RPD No. 6, plaintiff has refused, on the ground of alleged irrelevance, to provide any documents reflecting his communications with any health insurance carrier regarding coverage for a procedure or treatment relating to gender dysphoria, gender transition or sex reassignment. Given that plaintiff affirmatively alleges that gender dysphoria was the medical basis for seeking a hysterectomy and that his insurer, Amerigroup of New Jersey, required that he obtain referral letters from medical professionals indicating that a hysterectomy was medically necessary (Complaint ¶ 61), this request for communications between plaintiff and Amerigroup about the alleged medical necessity is plainly relevant to this lawsuit. Please produce the requested documentation.

Defendants cannot determine whether plaintiff is withholding any documents that are responsive to RPDs 7 and 8. Plaintiff’s response to RPD 7 confusingly objects to this request “to the extent it seeks communications from his counsel that occurred when counsel was not acting on Mr. Conforti’s behalf as his agent,” yet it is unclear to defendants how there could be any other capacity through which Mr. Conforti’s lawyers would be communicating with members of the news media about this lawsuit they filed on plaintiff’s behalf. Defendants renew their request for copies of all communications between plaintiff or his lawyers with any journalist or news reporter concerning this lawsuit. As for plaintiff’s response to RPD 8, despite the representation that “non-privileged documents” would be produced, Mr. Conforti has not produced any documents relating to any agreements with a publishing company to write an article or book concerning gender transition, sex reassignment or his experience with same. Please either produce responsive documents or advise that no such documents exist.

Similarly, plaintiff’s responses to RPDs 13-14 – which sought documents concerning the damages, injury or other relief claimed by plaintiff in this lawsuit – state that Mr. Conforti would produce “responsive, non-privileged documents,” but plaintiff has failed to do so. Please produce and identify by bates number any documents in response to these requests (or a log of any responsive documents withheld on the basis of an alleged privilege) or advise that plaintiff does not possess responsive documentation.

RPDs 15-16 requested documents relating to the diagnosis of or treatment recommended for gender dysphoria, gender transition or sex reassignment, and RPDs 18-19 sought records of psychiatric or psychological treatment that plaintiff sought from January 1, 2007 to the present and records of medical treatments for that same time frame. Plaintiff has objected to producing any documents other than for the hysterectomy sought or performed and has further interposed blanket relevance objections and dubious objections based on the attorney-client privilege. Those objections are without merit inasmuch as plaintiff contends that his alleged

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diagnosis of gender dysphoria is the basis for why he sought a hysterectomy, thus placing that condition at issue in this case. Similarly, plaintiff has placed his mental and emotional conditions at issue, both by claiming emotional distress as the only form of compensatory damages sought herein and by admitting in the Complaint that he has “long suffered with depression and anxiety.” (Compl. ¶ 3) Defendants are entitled to discovery into plaintiff’s admitted pre-existing history of depression and anxiety, as well as other causes for those conditions such as the side effects of hormone therapy and other health problems he may have faced.<sup>1</sup> It is also apparent that plaintiff treated with Rissy Batista, Vincent Fitzgerald and Ian Tang, MD, for gender dysphoria and/or for claimed emotional distress, yet the records and files of these health care providers have not been provided, nor has plaintiff executed the HIPAA authorizations that were attached to the RPDs for these providers. Please immediately produce the requested records and have Mr. Conforti execute authorizations for Batista, Fitzgerald and Tang as soon as possible.

On a final note, defendants disagree with plaintiff’s specious objections to the terms “statement” and “relating to this action” in Interrogatory 1 as overbroad, vague and undefined.” To resolve these objections, please consider the term “statement” in this question to refer to any written statement that a person – whether a party or non-party – has signed or otherwise adopted or approved or a contemporaneous stenographic, mechanical, electrical, or other recording (or transcript thereof) that recites substantially verbatim the person’s oral statement. Please consider the term “relating to this action” to mean any matter that is relevant to plaintiff’s claims and defendants’ defenses in this lawsuit as contemplated by Fed. R. Civ. P. 26(b)(1). And, to the extent plaintiff maintains his hyper-technical objection to producing a written statement or other document in response to this (or any other) interrogatory because it was requested in an interrogatory rather than a separate request for production, please advise immediately so we can quickly ask the Court to address this form-over-substance tactic.

We would appreciate your prompt written response to the foregoing issues. Thank you.

Very truly yours,

*/s/ Thomas F. Doherty*

Thomas F. Doherty

cc: Counsel of record (via email)

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<sup>1</sup> For the same reasons, plaintiff’s objections to Interrogatories 5-7 are inappropriate. Given the emotional distress damages sought by plaintiff and his admission that he has long suffered from depression and anxiety, discovery into his psychiatric/psychological treatment, medical treatment and social media postings about his claims or emotional condition cannot be restricted to the narrow matter of plaintiff undergoing a hysterectomy.



April 26, 2018

**By ECF**

Thomas Doherty  
Chris Mayer  
Martin Luther King Building &  
U.S. Courthouse  
50 Walnut Street, Room 4040  
Newark, New Jersey 07101

**Re: Conforti v. St. Joseph's Healthcare Sys., Inc., No. 2:17-cv-00050-JLL-CLW (D.N.J.)**

Mr. Doherty:

I write on behalf of the Plaintiff Jionni Conforti in the above-captioned matter. Thank you for your letter dated March 15, 2018, and for our productive meet and confer on April 10, 2018. Without waiving any objections, we summarize below the parties' current agreements on several outstanding discovery issues as discussed in our meet and confer, and we offer additional responses to your March 15 letter.

**I. Rule 35 Mental Examination of Mr. Conforti**

As an initial matter, your letter states that you intend to request that Mr. Conforti "undergo an examination pursuant to Fed. R. Civ. P. 35." Letter from Thomas Doherty (Mar. 15, 2018), at 1 ("Defs' Letter"). While you have not issued that request to date, we have significant concerns regarding the relevancy, purpose, and basis of a Rule 35 examination in this case, and we are particularly troubled by the undue prejudice to Mr. Conforti and the unwarranted invasion of his rights that would likely result. Please let us know as soon as possible the purported purpose, scope, and justifications for the Rule 35 examination you intend to seek so that we may properly assess your request. We reserve our right to raise any and all additional objections in this issue.

**II. General Objections to Defendants' Discovery Requests**

Your letter also raise questions regarding Mr. Conforti's objections to Defendants' First Set of Interrogatories ("Defs' First ROGs") and First Request for Production of Documents ("Defs' First RPD") that were served on you nearly eight months ago, *i.e.* on August 7, 2017. Without waiving any of our objections to your discovery requests, we state that we have not to date withheld any responsive information or documents solely pursuant to objections (ii)-(iv) identified in your letter. *Id.* ("(ii) claimed annoyance, embarrassment, oppression, undue burden or expense, (iii) the assertion that the discovery demands seek "sensitive and non-public personal information," and (iv) the contention that the discovery sought constitutes an 'unwarranted invasion of any affected person's or non-party's constitutional, statutory, or common law rights of privacy and confidentiality.'").

You also inquired into our objections based upon “(i) work product and attorney-client privilege” and requested a detailed privilege log. *Id.* As you are aware, the parties in this action agreed that “neither side is required to list on any privilege log any discovery material protected by any privilege, immunity, or protection that was/is created on or after the filing date of this litigation . . . [or] any communications with litigation counsel, regardless of timing[.]” *See* Joint Discovery Plan, Dkt. 13 at 6. With the exception of any material or communications subject to that agreement, no responsive documents were withheld to date pursuant to that objection.

Additionally, we note in response that Defendants also objected to producing documents and information in response to Plaintiff’s First Set of Requests for Production of Documents purportedly protected from disclosure by the attorney client or work product privileges, yet we have not received a privilege log from you. Please advise whether Defendants have withheld any otherwise responsive information or documents on the basis of privilege that is *not* subject to our Joint Discovery Plan agreement. If such documents were withheld, please provide a detailed privilege log for us to better evaluate the basis for any privilege assertion.

### **III. Plaintiff’s Production of Documents and Bates Numbers**

Your letter further notes that Plaintiff’s Responses and Objections to Defendants’ First Request for Production of Documents (“Plf’s First RPD Responses”), dated August 7, 2017, state that we “will produce” documents responsive to your requests. To clarify, with the exceptions noted below, we have produced all responsive, non-privileged documents that were located based on a reasonably diligent search of the relevant files, email accounts, and social media pages belonging to Mr. Conforti. (*See, e.g.*, Section IV *infra*).

Further, your request that we categorize and specify which documents in Plaintiff’s relatively small production are responsive to each individual request in Defendants’ First RPDs mischaracterizes our obligations under Rule 34 and appears to be unwarranted at this time. Rule 34(b)(2)(E)(i) provides two options for making productions: “[a] party must produce documents as they are kept in the usual course of business **or** must organize and label them to correspond to the categories in the request.” Fed. R. Civ. P. 34 (b)(2)(E)(i) (emphasis added). To the best of our knowledge, we produced responsive documents from Mr. Conforti as they were kept in the usual course of business. *See In re G-I Holdings Inc.*, 218 F.R.D. 428, 439 (D.N.J. 2003) (“If the producing party produces documents in the order in which they were kept in the usual course of business, the Rule imposes no duty to organize and label the documents.”). Nor do Defendants contend that the production is so disorganized or voluminous that Plaintiff must engage in the costly and time-consuming process of further categorizing the documents for you. *Id.* Moreover, since Plaintiff produced only a relatively small number of documents, the burden and expense of specifying which ones are responsive to your requests—*e.g.*, communications with reporters concerning this Action (RPD No. 7) and requested social media postings (RPD No. 12)—are equal for Plaintiff and Defendants.

Further, we note that, despite producing over 10,000 pages of documents since your June 16, 2017 Responses to Plaintiffs’ First RPDs, we have not received any supplemental responses from you with additional Bates numbers. If you continue to assert that we supplemental our responses to Defendants’ First RPD’s to indicate by Bates number which specific documents are

responsive to each request, we would ask that you do the same pursuant to your obligations under Rule 34.

#### **IV. Specific Issues Raised Regarding Plaintiff's Production of Documents**

Additionally, you have raised a number of questions regarding specific discovery issues, which we address below.

##### ***A. Instagram and Outlook***

With respect to your question regarding whether Mr. Conforti's Instagram account and his additional outlook email address were searched, we state that both were subject to a reasonably diligent search and, subject to Plaintiff's objections previously raised and parameters outlined in our response as agreed upon during the April 10 meet and confer, we did not discover any additional documents responsive to your First RPDs. (*See, e.g.*, Plf's RPD Responses No. 13).

##### ***B. Insurance Documents***

With respect to your question regarding whether any communications with Mr. Conforti's health insurance carriers were withheld (*i.e.* RPD No. 6), we point out that we objected to the overbroad, irrelevant nature of the request over 7 months prior to your March 15 letter. "Insurance coverage has no bearing on Defendants' refusal to treat Mr. Conforti." (Plf's RPD Responses at 6). Nonetheless, as we discussed at the April 10 meet and confer, and without waiving any objections, we will be producing additional insurance documents related to this request.

##### ***C. Communications with Reporters***

In response to your question regarding whether any communications with reporters concerning this action (*i.e.* RPD No. 7) were withheld, we state that, subject to our previously raised objections, no documents responsive to your request were withheld.

##### ***D. Documents Relating to Agreements with Publishing Companies***

With respect to your request for documents relating to any agreement between with Mr. Conforti and any publishing company (*i.e.* RPD No. 8), no such documents were discovered or withheld. (*See* Plf's RPD Responses No. 9). As stated in Mr. Conforti's Response to Defendants' Interrogatory No. 11, at no time has Mr. Conforti entered into any agreement with any author or publishing company with respect to writing a book concerning gender transition, sex reassignment, and/or Mr. Conforti's experience with same.

##### ***E. Documents Relating to Damages and Relief***

With respect to your question regarding whether any documents concerning the damages and injuries suffered by Mr. Conforti (*i.e.* RPD No. 13) or concerning the relief he is entitled to (*i.e.* RPD No. 13), with the exception of the forthcoming production of insurance-related documents, we state that we have produced all documents responsive to this request in Mr. Conforti's possession at this time.

***F. Medical Records and Medical Release Forms***

With respect to your question regarding whether your requests for documents relating to the diagnosis and treatment of gender dysphoria (*i.e.* RPD Nos. 15 & 16) and to psychiatric or psychological treatment received by Mr. Conforti (*i.e.* RPD Nos. 18 & 19), we note that you have not responded in writing to our August 2017 objections to the time period and scope of your overbroad requests for general, irrelevant medical records spanning back to January 1, 2007. (*See* Plf's RPD Responses at 3, ¶ 8). Indeed, Defendants have previously argued that the time period for Plaintiff's requests for documents dating back to January 1, 2011, was overbroad, *i.e.* four fewer years than your requests here. Regardless, we produced a number of documents in Mr. Conforti's possession that were responsive to your requests and relevant to this cause of action. (*See, e.g.*, Conforti-0000153–162).

Additionally, we objected to the form of the two purported releases attached to Defendants' First RPD as Exhibits A & B (*i.e.* RPD Nos. 17, 18 & 19). The purported releases were overbroad in scope, and they sought the release of confidential information that is not relevant to the claims and defenses involved in this proceeding and that is protected by privilege and Mr. Conforti's constitutional rights to privacy. In addition, as discussed above, we re-assert our objections to your request for medical releases for records dating back to January 1, 2007.

Nevertheless, as discussed in our April 10 meet and confer, we will be producing medical release forms for the following primary care physicians and mental health providers of Mr. Conforti: Dr. Rissy Batista, Dr. Vincent Fitzgerald, Dr. Ian Tang, Dr. Charles Haddad, Dr. Joseph Vitale, and Dr. Peter Raphael. As we also noted in our meet and confer, these releases will only pertain to records (1) dated from January 1, 2011, to August 7, 2017, (*i.e.* the date your Interrogatories and RPDs were answered, as stated in your written requests) and (2) related to (a) mental health treatments Mr. Conforti received and (b) related to Mr. Conforti's diagnosis and/or treatment for gender dysphoria.

If Defendants believe these records are insufficient to satisfy their discovery needs, Plaintiff re-iterates his objections to expanding the time period and scope of the releases. However, we remain willing to meet and confer again on your requests after the releases identified above are provided to Defendants. Plaintiff's counsel also agreed to consult with Mr. Conforti about what mental health or psychiatric treatments he received between January 1, 2007, and January 1, 2011. Without waiving any objections to the scope, relevancy, and burden of producing medical records dated prior to January 1, 2011, we state that Mr. Conforti does not recall seeing a mental health or psychiatric provider during that time period.

***G. Defendants' Response to Plaintiff's Proposed List of Search Terms, Custodians, and Locations To Be Searched***

Finally, as discussed in the April 10 meet and confer, we have reached an agreement on some, but not all, of the additional search terms, custodians, and locations to be searched proposed by Plaintiff on March 16, 2018.

**I. Defendants' Search Terms**

In a February 27, 2018 email, Defendants represented that the following search terms were originally used to locate documents responsive to Plaintiff's discovery requests:

1. Conforth
2. Conforti
3. Jionni
4. Krystal
5. Kris
6. ERDs
7. Ethical and Religious Directives
8. Transgender
9. Dysphoria
10. Sex reassignment
11. Gender confirmation
12. Gender identity
13. Gender expression
14. Cisgender<sup>1</sup>
15. Organizational Ethics
16. Patient Bill of Rights
17. Ethics Committee
18. Sterilization (all custodians except Drs. Kierce and Day)
19. Hysterectomy (all custodians except Drs. Kierce and Day)

During our April 10 meet and confer, the parties agreed that Defendants would expand their searches to include the following terms identified in Plaintiff's March 16, 2018 numbered list of proposed search terms or agreed upon during the meet and confer:

20. **Trans!** (No. 20)
21. **Gender transition** (No. 23)
22. **Hormone therapy** (No. 24)
23. **Hormonal therapy** (No. 25)
24. **GID** (No. 27)
25. **Steriliz!** (No. 28)
26. **FTM** (No. 45)
27. **Female-to-Male** (agreed to include during April 10 meet and confer)
28. **MTF** (No. 46)
29. **Male-to-Female** (agreed to include during April 10 meet and confer)

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<sup>1</sup> During our April 10 meet and confer, defense counsel could not recall whether the term "cisgender" was included in their prior searches. We have confirmed that this term was included in the search term list you emailed to us on February 27, 2018. Please confirm whether the term "cisgender" was indeed used during your prior searches or if it was erroneously included in your original list of search terms. If it was not used, Plaintiff renews his request that the term "cisgender" be included in additional searches.

## **II. Custodians**

Defendants also represented that the documents, correspondence, and other information possessed by the following custodians were searched using the original search terms identified by Defendants. It is Plaintiff's understanding that the records possessed by these custodians will be re-searched using the new search terms identified above:

1. Father Martin Rooney
2. Dr. Brian Day
3. Dr. Roger Kierce
4. Liz Regula
5. Francine Katz
6. Sr. Patricia Mennor

Further, during our April 10 meet and confer, the parties agreed that Defendants would expand their list of custodians to be searched using all search terms identified above to include:

7. **Sr. Maryanne Campeotto**
8. **Sr. Noreen Neary**
9. **Dr. Katerina Harwood**
10. **Maureen Lavin**

## **III. Locations to be Searched**

Finally, it is Plaintiff's understanding that the email accounts of all the above custodians will be searched or re-searched with the full list of search terms identified above. It is also our understanding that a database search was recently conducted using the original list of search terms, and a production is forthcoming. To be sure, Plaintiff believes that additional custodians should be searched by Defendants, including all members of the Transgender Patient Committee. However, the above documents the custodians for which the parties have agreed to date.

In addition, Plaintiff renews his request that Defendants search:

1. **All hard files of the above custodians** (including but not limited to handwritten notes, copies of minutes and agendas, handouts from presentations, internal memoranda, letters, etc.)
2. **Any additional electronic storage devices of the above custodians** (including but not limited to personal work computers);
3. **Dr. Brian Day's Totowa OB/GYN email account and electronic records;** and
4. **All prior searches be re-conducted using the additional search terms identified above** (including, but not limited to, all custodians' email accounts and hard files, as well as the electronic database recently searched by Defendants as discussed during our April 10 meet and confer).

## ***H. Deadline for Defendants to Respond to Plaintiff's Discovery Requests***

Finally, during our April 10 meet and confer, we agreed that Defendants would receive another extension of the deadline to respond to Plaintiff's discovery requests (including but not limited to Plaintiff's Second Set of Requests for Production and Plaintiff's First Set of Requests

for Admissions). The parties agreed that, notwithstanding any future agreements, Defendants would respond to Plaintiff's outstanding discovery requests by **April 30, 2018**.

Thank you for your continued cooperation in this matter.

Respectfully submitted,

*/s/ Thomas L. Barnes*

Thomas L. Barnes

Encl.

cc: Christopher M. Mayer, Esq. (counsel to Defendants) (via ECF)  
Thomas A. Doherty, Esq. (counsel to Defendants) (via ECF)

Margaret Schmidt, Esq. (counsel to Plaintiff)  
Todd Anten, Esq. (counsel to Plaintiff)  
Omar Gonzales-Pagan, Esq. (counsel to Plaintiff)  
Demoya Gordon, Esq. (counsel to Plaintiff)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

JIONNI CONFORTI,

*Plaintiff,*

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,  
INC.; ST. JOSEPH'S HOSPITAL AND  
MEDICAL CENTER D/B/A ST. JOSEPH'S  
REGIONAL MEDICAL CENTER; and  
FATHER MARTIN D. ROONEY,

*Defendants.*

Case 2:17-cv-00050-JLL-JAD

**PLAINTIFF JIONNI CONFORTI'S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANTS**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff Jionni Conforti, by his undersigned counsel, hereby serves his First Set of Requests for Production of Documents and Things to Defendants ("Requests") upon Defendants St. Joseph's Healthcare System, Inc., St. Joseph's Hospital and Medical Center d/b/a St. Joseph's Regional Medical Center, and Father Martin D. Rooney (each a "Defendant," and together the "Defendants"). Plaintiff requests that each Defendant produce the documents described herein, in accordance with the definitions and instructions set forth herein, within thirty (30) days of service of these Requests, to the offices of Quinn Emanuel Urquhart & Sullivan, LLP, located at 51 Madison Avenue, New York, New York, 10010. These Requests are continuing in nature and impose upon Defendants the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure.



## DEFINITIONS

As used herein, the following terms shall have the meanings indicated below:

1. “Action” means the above-captioned case proceeding in the United States District Court for the District of New Jersey, *Jionni Conforti v. St. Joseph’s Healthcare System, Inc. et al.*, Case No. 2:17-cv-00050-JLL-JAD (D.N.J.).
2. “Answer” means the answer filed in this Action by Defendants on February 10, 2017 (Dkt. No. 8).
3. “Communication” means any written, oral, or electronic exchange or transmission of information by any means, including face-to-face conversation, in-person meeting, mail, telephone, electronic mail, facsimile, instant message, social media, and the Internet.
4. “Complaint” means the complaint filed in this Action by Mr. Conforti on January 5, 2017 (Dkt. No. 1).
5. “Mr. Conforti” means the Plaintiff in this Action: Mr. Jionni Conforti, f/k/a Krystal Conforth.
6. “Defendant” and “Defendants” mean each of, and collectively, SJHS, SJRMC, and Father Martin Rooney, as those terms are defined herein.
7. “Defendant Hospital” and “Defendant Hospitals” mean each of, and collectively, SJRMC Paterson and SJRMC Wayne, as those terms are defined herein.
8. “Department of Obstetrics and Gynecology” means SJRMC’s Department of Obstetrics and Gynecology, including but not limited to its Robotic Surgery program.
9. “Diagnostic Code” means an International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) code and/or an International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) code.

10. “Document” means the complete original or a true, correct, and complete copy and any non-identical copies of any written, recorded, or graphic material, no matter how produced, recorded, stored, or reproduced, including any writing, letter, envelope, telegram, electronic mail, attachment to electronic mail, facsimile, message, instant message, voicemail, meeting minute, memorandum, statement, book, publication, record, survey, map, study, report, handwritten note, drawing, working paper, chart, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, microfiche, photograph, index, scientific notebook, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, and any other data compilation in Your possession, custody, or control. The term “Document” includes, without limitation, Communications. A draft, version, or non-identical copy is a separate Document within the meaning of this term.

11. “Dr. Day” means Dr. Brian Day, a surgeon who at all times relevant to the Complaint had admitting privileges at SJRMC, as that term is defined herein.

12. “Ethical and Religious Directives” means the Fifth Edition Ethical and Religious Directives for Catholic Health Care Services issued by the United States Conference of Catholic Bishops on November 17, 2009.

13. “Father Martin Rooney” means Defendant Father Martin D. Rooney, the Director of Pastoral Care and Mission Services at SJHS, as that term is defined herein, during all periods relevant to the Complaint in this Action.

14. “Father Rooney Email” means the email Father Martin Rooney sent Mr. Conforti on June 16, 2015, stating: “This is to follow up to your e-mail inquiring about scheduling a total hysterectomy here at St. Joseph’s to remove all female parts based on the medical necessity for

Gender Reassignment. This is to inform you that as a Catholic Hospital we would not be able to allow your surgeon to schedule this surgery here at St. Joseph's.”

15. “Initial Disclosures” means Defendants’ Initial Disclosures served pursuant to Federal Rule of Civil Procedure 26(a)(1) on April 16, 2017, and any amendments or supplements thereto.

16. “Interrogatory” means any request served pursuant to Federal Rule of Civil Procedure 33.

17. “OCR” means the Office for Civil Rights of the United States Department of Health and Human Services.

18. “OCR Complaint” refers to the civil rights administrative complaint dated December 11, 2015, filed on behalf of Mr. Conforti against one or more Defendants with the OCR.

19. “Organizational Ethics Policy” means the SJHS (as that term is defined herein) corporate compliance document titled “Organizational Ethics,” available at <https://stjosephshealth.org/images/pdf/corporate-compliance/Organizational-Ethics-Policy.pdf>.

20. “Patient Bill of Rights” means any statement available on or through SJHS’s (as that term is defined herein) website at any time (and available at <https://stjosephshealth.org/images/pdf/Bill of Rights 11x17 SJWH English Final Nov 11.pdf> as of the date that these Requests are being served) that ever stated, in form or substance, that all patients are entitled to “Legal Rights,” including “treatment and medical services without discrimination based on . . . sex . . . [and] gender identity or expression.”

21. The term “person” means any natural person, partnership, association, corporation, joint venture, trust, community group, government or subdivision of any government (including any instrumentality, bureau, department, office, or agency of any government), not-for-profit

enterprise, or other business entity, and all present and former officers, directors, agents, administrators, managers, representatives, contractors, consultants, employees, or other persons acting or purporting to act on behalf of such person.

22. “Procedure Code” means a Current Procedural Terminology (CPT) code and/or a Healthcare Common Procedure Coding System (HCPCS) code, and/or an International Classification of Diseases, Tenth Revision, Procedure Coding System (ICD-10-PCS) code.

23. The terms “related to,” “relating to,” “referring,” or “concerning” mean discussing, describing, reflecting, involving, including, containing, analyzing, studying, reporting, referring, showing, supporting, embodying, identifying, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, pertaining, or in any way logically or factually connected with the matter discussed, in whole or in part.

24. “Request for Admission” means any request served pursuant to Federal Rule of Civil Procedure 36.

25. “SJHS” means Defendant St. Joseph’s Healthcare System, Inc., the not-for-profit holding corporation sponsored by the Sisters of Charity of Saint Elizabeth that has its principal place of business at 703 Main Street, Paterson, New Jersey 07503, including any of its corporate parents, subsidiaries, related corporations, affiliates, divisions, predecessors in interest, successors in interest, and assigns, any of its present or former officers, directors, employees, agents, representatives, attorneys, accountants, and any and all persons or entities acting on its or their behalf.

26. “SJPMC” means Defendant St. Joseph’s Hospital and Medical Center d/b/a St. Joseph’s Regional Medical Center, the wholly owned subsidiary of SJHS that operates the two Defendant Hospitals, including any of its corporate parents, subsidiaries, related corporations,

affiliates, divisions, predecessors in interest, successors in interest, and assigns, any of its present or former officers, directors, employees, agents, representatives, attorneys, accountants, and any and all persons or entities acting on its or their behalf, and expressly including but not limited to Sister Pat Mennor and Roger Kierce, M.D.

27. “SJRCM Paterson” means the SJRCM acute-care hospital that has its principal place of business at 703 Main Street, Paterson, New Jersey 07503.

28. “SJRCM Wayne ” means the SJRCM acute-care hospital located in Wayne, New Jersey, which was merged with SJRCM effective January 1, 2010.

29. “Sterilization” means any medical technique or procedure that results in a person being unable to reproduce, including but not limited to any essure, hysterectomy, minilaparotomy, salpingectomy, tubal ligation, tubal occlusion, vasectomy, and vasoligation.

30. “You” and “Your” refer to the Defendants.

### **INSTRUCTIONS**

1. These Requests are issued to each of the Defendants. Defendants’ answers to these Requests, and all productions of Documents responsive to these Requests, shall be made within thirty (30) days of service of these Requests.

2. Unless otherwise specified, the time period covered by these Requests is January 1, 2011, to the present. If it is necessary to refer to periods of time prior to January 1, 2011, in order to respond to a Request, please do so.

3. These Requests are continuing in nature, up to and during the course of trial. Defendants’ responses to these Requests are to be promptly supplemented or amended if, after the time of their initial responses, Defendants learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil

Procedure 26(e). Mr. Conforti will object to any attempt to introduce evidence to the Court that should have been but was not disclosed in the responses or supplementation of the responses.

4. All requested Documents are to be produced in the order and manner in which they are currently maintained by Defendants, including producing them with images of their original file folders and file jackets or covers, and indicating the division, department, and/or individual from whose files the Document is being produced.

5. Documents relevant and responsive to the Requests shall be gathered from all professional as well as personal files, computers and electronic devices, including personal and professional email, instant messaging, and cloud-based storage accounts.

6. All Documents are to be produced in electronic form pursuant to a protocol that may be agreed to among the parties.

7. If Defendants object to any Request, Defendants shall set forth with specificity the grounds for objecting to the Request, including the reasons, and must state whether any responsive materials are being withheld on the basis of that objection.

8. If Defendants object to any part of a Request, Defendants shall specify each part of the Request to which Defendants object; set forth with specificity the grounds for objecting to each such part of the Request, including the reasons; state whether any responsive materials are being withheld on the basis of that objection; and otherwise respond to all parts of the Request to which Defendants do not object.

9. If Defendants withhold any Document responsive to these Requests under a claim of privilege, Defendants shall, for each such withheld document, provide a description of the Document and a statement of the basis upon which the privilege asserted is claimed. Such description(s) shall be sufficiently detailed to permit Mr. Conforti and the Court to evaluate the

claim(s) of privilege. Further, these Requests shall incorporate Local Civil Rule 34.1 of the United States District Court for the District of New Jersey, which governs Defendants' obligations in asserting a claim of privilege.

10. In the event that any Document was formerly in the possession, custody, or control of Defendants and has since been lost or destroyed, that document is to be identified in writing as follows: (A) addressor, addressee, person who prepared or authorized the document; (B) date of preparation or transmittal; (C) subject matter; (D) number of pages, attachments, or appendices; (E) all persons to whom distributed; (F) date of loss or destruction; and (G) if destroyed, the manner of destruction, reason for destruction, persons authorizing destruction and persons destroying the document.

11. For purposes of interpreting or construing the scope of these Requests, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

- a. Construing "and" as well as "or" in the disjunctive or conjunctive, as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural, and the plural form to include the singular;
- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term "including" to mean "including but not limited to" and construing the term "all" to mean "any and all," and vice versa;
- e. Construing the term "each" to include "every," and construing "every" to include "each";
- f. Construing the use of a verb in any tense as the use of the verb in all other tenses; and

- g. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.

### **DOCUMENT REQUESTS**

#### **DOCUMENT REQUEST NO. 1.**

All Documents and Communications related to Defendants' awareness of Mr. Conforti's request, either directly or through Dr. Day, for permission to schedule his hysterectomy at the Defendant Hospitals.

#### **DOCUMENT REQUEST NO. 2.**

All Documents and Communications related to Defendants' decision to deny Mr. Conforti permission to schedule his hysterectomy at the Defendant Hospitals.

#### **DOCUMENT REQUEST NO. 3.**

All Documents and Communications related to any hysterectomy sought by or performed on Mr. Conforti, including any Communications with Dr. Day.

#### **DOCUMENT REQUEST NO. 4.**

All Documents related to Mr. Conforti's patient file and medical history maintained by Defendants, including all Documents referenced in or appended to Mr. Conforti's patient file.

#### **DOCUMENT REQUEST NO. 5.**

Documents sufficient to identify all employees, agents, representatives, attorneys, outside counsel, and other persons or entities purporting to act on Defendants' behalf and who were ever involved in or aware of Defendants' decision to deny Mr. Conforti permission to schedule his hysterectomy at the Defendant Hospitals.



**DOCUMENT REQUEST NO. 6.**

All Documents and Communications related to Mr. Conforti's OCR Complaint, including Defendants' position statement and all Documents or Communications related to OCR's investigation thereof.

**DOCUMENT REQUEST NO. 7.**

All Communications to Mr. Conforti, from Mr. Conforti, between Defendants related to Mr. Conforti, or with any third party related to Mr. Conforti.

**DOCUMENT REQUEST NO. 8.**

All Communications to Dr. Day, from Dr. Day, between Defendants related to Dr. Day, or with any third party related to Dr. Day, concerning Mr. Conforti, Defendants' policies regarding patient access to facilities in connection with the provision of medical services and treatment, or the medical basis of any Sterilization that was, could be, or would be performed at any of the Defendant Hospitals or any other healthcare facility owned or operated by SJHS.

**DOCUMENT REQUEST NO. 9.**

All Documents related to any Sterilization procedure performed by Dr. Day, or for which permission for Dr. Day to perform a Sterilization was denied, at any of the Defendant Hospitals or any other healthcare facility owned or operated by SJHS.

**DOCUMENT REQUEST NO. 10.**

All Documents and Communications related to the process You employ in evaluating whether to grant or deny permission to schedule or perform (directly or indirectly) a Sterilization at any of the Defendant Hospitals or any other healthcare facility owned or operated by SJHS, including all guidelines, factors, or rules You consider or take into account.

**DOCUMENT REQUEST NO. 11.**

Documents sufficient to identify all employees, agents, representatives, attorneys, outside counsel, and other persons or entities purporting to act on Defendants' behalf and who have ever been involved in evaluating whether to grant or deny approval to schedule or perform a Sterilization at any of the Defendant Hospitals or any other healthcare facility owned or operated by SJHS.

**DOCUMENT REQUEST NO. 12.**

Documents sufficient to identify all employees, agents, representatives, attorneys, outside counsel, and other persons or entities purporting to act on Defendants' behalf involved in the implementation of, adherence to, or enforcement of the Ethical and Religious Directives.

**DOCUMENT REQUEST NO. 13.**

All Documents and Communications related to any adoption, approval, revision, amendment, application, interpretation, or construction of or to the Organizational Ethics Policy.

**DOCUMENT REQUEST NO. 14.**

All Documents and Communications related to any adoption, approval, revision, amendment, application, interpretation, or construction of or to the Professional Conscience policy (Reference #1001) identified in the Organizational Ethics Policy.

**DOCUMENT REQUEST NO. 15.**

Documents sufficient to identify each Diagnostic Code and Procedure Code used to document any Sterilization procedure performed at each Defendant Hospital and any other healthcare facility owned or operated by SJHS.

**DOCUMENT REQUEST NO. 16.**

Documents sufficient to show the revenue accrued by Defendants from performing Sterilization procedures on a month-by-month basis.

**DOCUMENT REQUEST NO. 17.**

All Documents and Communications concerning the enforcement of the Ethical and Religious Directives as related to Sterilizations.

**DOCUMENT REQUEST NO. 18.**

All Documents and Communications between You and any clergy member or representative of the Catholic Church concerning Your enforcement of or compliance with the Ethical and Religious Directives.

**DOCUMENT REQUEST NO. 19.**

Organizational charts or similar Documents sufficient to reflect all titles and responsibilities, reporting structure, and/or hierarchy for the Department of Obstetrics and Gynecology, Surgical Services Department, Department(s) of Pastoral Care and Mission Services, and Department of Patient Relations, and all changes or modifications thereto.

**DOCUMENT REQUEST NO. 20.**

All Documents and Communications related to any contract, memorandum of understanding, or other agreement between SJHS or SJRMC and any federal, state, municipal, or other governmental entity or authority relating to the provision of healthcare to the public.

**DOCUMENT REQUEST NO. 21.**

All Documents and Communications related to the policies and procedures of SJHS and SJRMC regarding patient access to facilities in connection with the provision of medical services and treatment.

**DOCUMENT REQUEST NO. 22.**

All Documents and Communications related to any drafting, review, adoption, and approval of the statement in the Patient Bill of Rights that entitles all patients to treatment and medical services without discrimination based on sex and gender identity or expression.

**DOCUMENT REQUEST NO. 23.**

All Documents and Communications related to any SJHS or SJRMC application for and receipt of federal and state government funds, including but not limited to grants, reimbursements, and payments.

**DOCUMENT REQUEST NO. 24.**

All Documents and Communications related to any funds received by SJHS and SJRMC in connection with the provision of healthcare from any charity or program owned or operated by any federal, state, municipal, or other governmental entity or authority.

**DOCUMENT REQUEST NO. 25.**

All Documents and Communications supporting the denial in paragraph 76 of the Answer that a cisgender woman acquaintance of Mr. Conforti's underwent a hysterectomy at SJRMC Paterson in 2009.

**DOCUMENT REQUEST NO. 26.**

All Documents and Communications related to any submission, inquiry, or response by any of the Defendant Hospitals to any magazine, journal, website, or any other form of publication in connection with any rating, ranking, evaluation, or assessment concerning the Department of Obstetrics and Gynecology.

**DOCUMENT REQUEST NO. 27.**

All Documents and Communications related to any summary data or metrics compiled regarding any Sterilizations performed at any of the Defendant Hospitals or any other healthcare facility owned or operated by SJHS.

**DOCUMENT REQUEST NO. 28.**

Documents sufficient to show: (1) the number of Sterilization procedures performed at each of the Defendant Hospitals or any other healthcare facility owned or operated by SJHS; and (2) for each such Sterilization procedure, the reason the patient provided for requesting the Sterilization.

**DOCUMENT REQUEST NO. 29.**

All Documents and Communications related to the Father Rooney Email.

**DOCUMENT REQUEST NO. 30.**

Documents sufficient to show Defendants' document retention policies, including the retention of email and other electronic documents or electronic information.

**DOCUMENT REQUEST NO. 31.**

All Documents concerning this Action, including those concerning: (1) the existence of this Action; and (2) the facts, allegations, claims and defenses set forth in the Complaint and the Answer.

**DOCUMENT REQUEST NO. 32.**

All Documents concerning any expert reports served or to be served in this Action pursuant to Fed. R. Civ. P. 26(a)(2).

**DOCUMENT REQUEST NO. 33.**

Documents sufficient to identify all persons with whom Defendants have communicated about this Action.

**DOCUMENT REQUEST NO. 34.**

All Documents upon which Defendants relied upon, or intend to rely upon, in support of their denials of any of the allegations of the Complaint.

**DOCUMENT REQUEST NO. 35.**

All Documents upon which Defendants may introduce, for any purpose, in any hearing or trial in this Action.

**DOCUMENT REQUEST NO. 36.**

All Documents and Communications Defendants referenced, referred to, relied upon, or used in any way in formulating their Initial Disclosures.

**DOCUMENT REQUEST NO. 37.**

To the extent not requested above, all Documents and Communications that Defendants may rely upon to support their defenses against Plaintiffs' claims in this Action.

**DOCUMENT REQUEST NO. 38.**

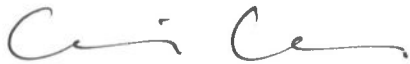
All Documents and Communications Defendants referenced, referred to, relied upon, or used in any way in answering each Interrogatory served by Mr. Conforti in this Action.

**DOCUMENT REQUEST NO. 39.**

All Documents and Communications Defendants referenced, referred to, relied upon, or used in any way in answering each Request for Admission served by Mr. Conforti in this Action.

DATED: May 17, 2017

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By:   
\_\_\_\_\_  
Christopher T. Cook (N.J. Bar No. 015382012)  
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*Attorneys for Plaintiff Jionni Conforti*

**CERTIFICATE OF SERVICE**

I, Christopher T. Cook, hereby certify that on this 17th day of May 2017, I caused a true and correct copy of the foregoing Plaintiff Jionni Conforti's First Set of Requests for Production of Documents and Things to Defendants to be served by U.S. Priority Mail upon:

Christopher S. Mayer, Esq.  
Thomas F. Doherty, Esq.  
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*Attorneys for Defendants*

By:   
\_\_\_\_\_  
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