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

15 HELEN ROE, a minor, by and through her
parent and next friend MEGAN ROE;
16 JAMES POE, a minor, by and through his
parent and next friend LAURA POE; AND
17 CARL VOE, a minor, by and through his
parent and next friend RACHEL VOE,

18 Plaintiffs,

19 v.

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

23 Defendant.
24

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

**PLAINTIFFS’ MOTION TO
COMPEL RESPONSES TO
INTERROGATORIES AND
PRODUCTION OF DOCUMENTS**

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1 Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Plaintiffs respectfully
2 move the Court for an order compelling Defendant to (i) respond completely and accurately
3 to Interrogatory Nos. 9–16 and produce non-privileged documents in response to Document
4 Request Nos. 14–17; (ii) respond completely and accurately to Interrogatory No. 1;
5 (iii) apply Plaintiffs’ proposed search parameters for electronically stored information (ESI)
6 and produce non-privileged, responsive documents; and (iv) grant such other relief as the
7 Court may deem just and proper.¹

8 I. INTRODUCTION

9 It has been more than seven months since the Court denied Defendant’s motion to
10 dismiss and Plaintiffs filed their motion for class certification. Under the operative
11 scheduling order, the parties should be in the final weeks of fact discovery, but Defendant
12 has stonewalled Plaintiffs’ efforts to obtain documents and information about core issues in
13 this case. The result is remarkable: while Plaintiffs have completed document production
14 and are prepared to offer their clients for depositions next month,² Defendant has refused to
15 respond to numerous discovery requests about his key defenses or produce a single email.
16 Plaintiffs bring this motion to resolve three discrete issues and get discovery back on track.

17 *First*, Defendant has not provided *any* information in discovery about his
18 justification for enforcing the surgical requirement in A.R.S. § 36-337(A)(3), even though
19 a central question in this case is whether he had an exceedingly persuasive justification for
20 doing so. (Dkt. 83 (Order Denying Defendant’s Mtn. to Dismiss) at 9 (concluding
21 heightened scrutiny applies to Plaintiffs’ equal protection claim).)³ Defendant argues that
22 Plaintiffs’ requests seek attorney mental impressions and “legal conclusions,” but the

23 ¹ Plaintiffs have not requested oral argument but are available at the Court’s convenience
24 to address the issues raised in this motion.

25 ² Plaintiffs agreed to a 30-day extension on Defendant’s time to depose Plaintiffs and non-
26 party Lizette Trujillo. Otherwise, those depositions would have concluded by the end of
27 May 2022.

28 ³ Unless otherwise noted, all other ECF references are to *Roe, et al. v. Herrington, et al.*,
Case No. 20-cv-484-JAS (D. Ariz.).

1 requests do no such thing. Plaintiffs seek information and documents about *Defendant's*
2 justification for enforcing the surgical requirement. That justification is not a legal
3 conclusion; it is the factual basis for at least one of Defendant's defenses and an issue on
4 which he carries the burden of proof.

5 *Second*, Defendant has refused to respond completely to discovery requests that seek
6 information about policies and processes of the Arizona Department of Health Services
7 ("ADHS") for "correcting" the sex marker on an Arizona birth certificate. Specifically,
8 Defendant erroneously insists that this case can only be about an "amendment" to a birth
9 certificate and thus any information regarding corrections is irrelevant. This position
10 ignores Plaintiffs' amended complaint, which alleges that Defendant's policy of accepting
11 a physician's letter to correct information on a person's birth certificate pursuant to A.R.S.
12 § 36-323(c)—including the sex marker—is evidence that Defendant treats transgender
13 people differently than nontransgender people and undermines Arizona's purported
14 justifications for enforcing the surgical requirement in A.R.S. § 36-337(A)(3).

15 *Third*, despite Plaintiffs' best efforts, the parties have been unable to agree on search
16 parameters that Defendant will apply to ESI in his possession, custody, or control.
17 Defendant took ten weeks to respond Plaintiffs' first search parameters proposal, only to
18 rescind his counterproposal at the parties' meet and confer two weeks later. Defendant now
19 insists that he is not obligated to run any of Plaintiffs' proposed search terms other than the
20 ones that ADHS used when it responded to a pre-suit public records request.

21 **II. BACKGROUND**

22 **A. The Court Denies Defendant's Motion to Dismiss and Plaintiffs File a Motion** 23 **for Class Certification.**

24 Plaintiffs—all transgender young people who were born in Arizona—filed the
25 amended class action complaint on January 8, 2021. (Dkt. 47 ("Am. Compl.")). The
26 amended complaint alleges that Defendant's enforcement of A.R.S. § 36-337(A)(3) and
27 various implementing regulations discriminates against Plaintiffs and the Proposed Class
28 on the basis of their sex and transgender status and invades their constitutional rights to

1 privacy, liberty and autonomy, and their right to choose whether to undergo a particular
2 medical treatment, all in violation of the Equal Protection and Due Process Clauses of the
3 Fourteenth Amendment to the U.S. Constitution. (*Id.*) On March 10, 2021, Defendant
4 moved to dismiss the amended complaint. (Dkt. 54.) The Court denied Defendant’s motion
5 to dismiss in its entirety and issued a formal order on August 5, 2021. (Dkts. 77, 83.) As
6 relevant here, the Court concluded that the surgical requirement in A.R.S. § 36-337(A)(3)
7 facially discriminates against transgender people, thus triggering “heightened scrutiny.”
8 (Dkt. 83 at 7–12.)

9 On August 25, 2021, Plaintiffs filed a motion seeking to certify a class consisting of
10 “[a]ll transgender individuals born in Arizona, now and in the future, who seek to change
11 the sex listed on their birth certificates but have not undergone a ‘sex change operation’ as
12 treatment for their gender dysphoria.” (Dkt. 89 at 2.) After Plaintiffs’ class certification
13 motion was filed, the parties disagreed about the most efficient way to conduct discovery,
14 including whether class certification discovery and merits discovery should be bifurcated.
15 (Dkt. 91.) Following a case management conference, on September 15, 2021, the Court
16 ordered that the parties “shall have 60 days . . . to conduct class action discovery, 30 days
17 to propound written discovery, and 30 days from the date of the last written response to take
18 the depositions of Lizette Trujillo and the parents/next friends of the three named
19 Plaintiffs.” (Dkt. 100.) The Court explained that “[t]he written discovery and depositions
20 shall primarily focus on class certification issues,” but that “to the extent there is any
21 potential overlap with merits issues, it shall be allowed via both written discovery requests
22 and during the depositions.” (*Id.*)

23 **B. Plaintiffs Have Completed Production, But Defendant Has Barely Begun.**

24 On October 15, 2021, Plaintiffs served their First Sets of Interrogatories and
25 Requests for the Production of Documents. (Exs. 1–2.)⁴ Defendant served responses and
26 objections to the interrogatories and document requests on December 6, 2021, and later

27 _____
28 ⁴ All Ex. ___ cites are to the Declaration of Colin M. Proksel, which has been filed
concurrently herewith.

1 supplemented their responses. (Exs. 3–4.) As relevant here, Defendant indicated in
2 response to more than ten separate document requests that he “ha[d] not conducted a search
3 of available ESI but will do so once the parties have agreed to a search protocol.” (Exs. 4.)
4 Defendant declined to respond to interrogatories and document requests about his
5 justification for enforcing A.R.S. § 36-337(A)(3) on the ground that those requests sought
6 attorney-client privileged information and “legal conclusions.” (Exs. 3–4.)

7 In January 2022, Plaintiffs proposed search parameters for Defendant’s planned ESI
8 review, which included search terms, custodians, and a date range. At the same time,
9 Plaintiffs identified numerous deficiencies in Defendant’s discovery responses, including
10 those relating to ADHS’s justification for enforcing the challenged statute. On April 6,
11 2022—more than ten weeks after Plaintiffs first proposed ESI search parameters—
12 Defendant made a counterproposal to Plaintiffs’ proposed search parameters.

13 On April 19, 2022, at Defendant’s request, the parties met and conferred about
14 outstanding discovery issues. At the outset, Defendant informed Plaintiffs that he was
15 withdrawing his ESI counterproposal because he had not fully investigated the basis for the
16 counterproposal prior to sending it. Defendant also informed Plaintiffs that he would only
17 agree to fewer search terms than those he had offered in his withdrawn counterproposal.
18 Specifically, he said that he would not agree to run search terms other than those used by
19 ADHS to respond to a public records request to which ADHS responded months before this
20 lawsuit was filed. Because Defendant had not investigated Plaintiffs’ proposed search
21 parameters, he was unable to explain the incremental number of documents that hit on
22 Plaintiffs’ proposed search parameters that did not also hit on the search terms used by
23 ADHS in responding to the public records request.

24 Following the April 19 meet and confer, the parties exchanged additional
25 correspondence in an effort resolve their outstanding discovery disputes. However, the
26 parties are currently at an impasse on each of the issues raised in this motion.
27
28

1 **III. ARGUMENT**

2 Under Rule 26(b)(1) of the Federal Rule of Civil Procedure, “[p]arties may obtain
3 discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense
4 and proportional to the needs of the case, considering the importance of the issues at stake
5 in the action, the amount in controversy, the parties’ relative access to relevant information,
6 the parties’ resources, the importance of the discovery in resolving the issues, and whether
7 the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ.
8 P. 26(b)(1). The relevancy standard under Rule 26 is “extremely broad,” and “[i]nformation
9 within this scope of discovery need not be admissible in evidence to be discoverable.” *Pettit*
10 *v. Sierra*, 2021 WL 488338, at *1–2 (D. Ariz. Feb. 2, 2021).

11 Under Rule 37, a party may move for an order compelling discovery when the
12 opposing party “fails to answer an interrogatory submitted under Rule 33” or “fails to
13 produce documents . . . as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3). The party
14 opposing discovery “bears the burden of supporting its objections and showing why
15 discovery should not be allowed.” *Pinson v. United States*, 2022 WL 1122176, at *4 (D.
16 Ariz. Apr. 14, 2022).

17 **A. Defendant Should Be Required to Provide Complete and Accurate Responses**
18 **to Plaintiffs’ Interrogatories Relating to His Justification for Enforcing A.R.S. § 36-**
19 **337(A)(3) and to Produce Related Documents.**

20 Defendant has refused to answer Interrogatory Nos. 9–16 and Document Request
21 Nos. 14–17, which seek information about a critical issue in this case: whether ADHS has
22 any justification for enforcing the surgical requirement in A.R.S. § 36-337(A)(3). (Exs. 3–
23 4.) These requests seek documents and information that are directly relevant to Defendant’s
24 defenses to Plaintiffs’ claims under the Equal Protection and Due Process Clauses of the
25 Fourteenth Amendment. Defendant’s stated reasons refusing to respond to these requests
26 are meritless.

27 There is no question that these requests seek information that is discoverable under
28 Rule 26. (Exs. 5–6.) As the Court recognized in denying Defendant’s motion to dismiss,

1 enforcement of the surgical requirement facially discriminates against Plaintiffs and
2 members of the Proposed Class on the basis of their sex and transgender status, triggering
3 “heightened scrutiny” under the Equal Protection Clause.⁵ (See Dkt. 83 at 9.) For A.R.S.
4 § 36-337(A)(3) to survive judicial review under the Equal Protection Clause’s heightened
5 scrutiny standard, ADHS must offer an “exceedingly persuasive justification” for enforcing
6 it. See *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 723–24 (1982); 458 U.S. at 723–24.
7 Specifically, ADHS must demonstrate that enforcing the requirement “serves important
8 governmental objectives and that the discriminatory means employed are substantially
9 related to the achievement of those objectives.” *Id.* at 724 (internal quotations omitted).
10 The justification must also be “genuine, not hypothesized or invented post hoc in response
11 to litigation.” *United States v. Virginia*, 518 U.S. 515, 533 (1996).

12 There is no dispute, nor could there be, that Defendant must offer a justification for
13 enforcing the surgical requirement. Indeed, one of Defendant’s affirmative defenses is that
14 “his actions and inactions have been made pursuant to a legitimate government purpose.”
15 (Dkt. 102 at 23.) Defendant’s justification for enforcing A.R.S. 36-337(A)(3) is therefore
16 plainly discoverable under Rule 26, and Plaintiffs are entitled to documents and information
17 about that justification. See Fed. R. Civ. P. 33(a)(2) (“An interrogatory may relate to any
18 matter that may be inquired into under Rule 26(b)”); 34(a) (permitting a party to serve a
19 request for documents “within the scope of Rule 26(b)”).

20 To understand Defendant’s justification for enforcing the surgical requirement,
21 Plaintiffs propounded Interrogatory Nos. 9–16 and Document Request Nos. 14–17, which
22 seek the production of all documents that support any proffered justification. Defendant
23 called these interrogatories “improper” and objected on the ground that they “seek[] the
24 mental impressions and legal conclusions of counsel for Defendant, which is protected by

25
26 ⁵ Counts Two, Three, and Four of the amended complaint implicate the Plaintiffs’—and the
27 Proposed Class’s—fundamental constitutional rights under the Due Process Clause of the
28 Fourteenth Amendment. To prevail, Defendant must prove the challenged statute or
regulation is “narrowly tailored” to achieve “a compelling state interest.” *Reno v. Flores*,
507 U.S. 292, 302 (1993).

1 the attorney-client privilege and/or work-product doctrine.” (Ex. 3.) Defendant later
2 supplemented his answers by stating: “Defendant will consider supplementing this response
3 should Plaintiffs rephrase this Interrogatory so that it does not seek a legal conclusion.”
4 (*Id.*) Defendant made a similar statement in supplemental responses to Plaintiffs’
5 Document Requests Nos. 14–17. (Ex. 4.)

6 The interrogatories and document requests do not ask about, or seek documents that
7 would reveal, counsel’s mental impressions. Rather, they seek information and documents
8 about *Defendant’s* justification for enforcing the surgical requirement, which must have
9 existed before this litigation was even contemplated. *See Virginia*, 518 U.S. at 533.
10 Defendant has not offered any explanation for his claim that the requests seek counsel’s
11 mental impressions. In recent correspondence, Defendant has also suggested that Plaintiffs
12 are seeking information about the “legislative intent” behind the challenged statute, which
13 Defendant claims is not in his possession, custody, or control. This too misunderstands the
14 requests. Plaintiffs seek information about *Defendant’s* governmental justification for
15 enforcing the statute and related regulation—a regulation promulgated by Defendant—
16 independent of legislative intent. For that reason, Plaintiffs’ interrogatories and document
17 requests do not mention or seek information and documents about “legislative intent.”

18 Defendant’s other objection—that the interrogatories and requests seek a “legal
19 conclusion”—is equally baseless. Defendant’s governmental justification for enforcing the
20 surgical requirement, whatever it may be, is a fact that is central to at least one of his
21 affirmative defenses and an issue on which he carries the burden of proof. It is not a legal
22 conclusion. *See Avila v. Mohave County*, 2015 WL 6660187, at *6–7 (D. Ariz. Nov. 2,
23 2015) (rejecting objections that interrogatories “call[ed] for a legal conclusion” when they
24 sought “facts supporting [defendant’s] affirmative defenses” and ordering defendant to
25 supplement responses); *Firetrace USA, LLC v. Jesclard*, 2009 WL 73671, at *2–3 (D. Ariz.
26 Jan. 9, 2009) (ordering defendants to respond to interrogatory seeking information about
27 their affirmative defenses). Even if the requests did call for a legal conclusion, Defendant
28 would still be obligated to respond to them. *See Thomas v. Cate*, 715 F. Supp. 2d 1012,

1 1029–30 (E.D. Cal. 2010) (“[T]he fact that an interrogatory calls for a legal conclusion is
 2 not grounds for an objection.”); *see also Davis v. Buckley*, 2013 WL 12114581, at *2 (D.
 3 Ariz. June 11, 2013) (interrogatories that seek a legal conclusion are only objectionable
 4 “when the legal conclusion is unrelated to the facts of the case”).⁶

5 At bottom, this case is about whether ADHS has a constitutionally sufficient
 6 justification to enforce a law that, on its face, treats Arizonans differently based on their sex
 7 and transgender status and infringes upon rights safeguarded by the Due Process Clause. If
 8 Defendant has such a justification, he is obligated to describe it and disclose information
 9 and documents about it; if he does not, then he should state so and narrow the case.
 10 Accordingly, the Court should order Defendant to respond completely and accurately to
 11 Interrogatory Nos. 9–16 and produce non-privileged documents responsive to Document
 12 Request Nos. 14–17.

13 **B. Defendant Should Be Required to Provide Complete and Accurate Responses**
 14 **to Interrogatory No. 1.**

15 Interrogatory No. 1 asks Defendant to “[l]ist and [d]escribe each and every ADHS
 16 and/or BVR policy concerning a change or request to change the sex listed on a birth
 17 record.” (Ex. 1.) Plaintiffs defined the scope of that interrogatory to include amendments,
 18 A.R.S. § 36-301(2), and corrections, A.R.S. § 36-301(6), to birth records. (*See* Ex. 1 at 1.)
 19 Defendant, however, is refusing to provide any information or documents about the policies
 20 and procedures for “correcting” information on a birth record, which he claims, erroneously,
 21 has no relevance to this case. (Ex. 3.)

22
 23 ⁶ Defendant has also argued that the interrogatories and document requests “require[] an
 24 assumption that Plaintiff’s equal protection rights have been violated.” (Exs. 5–6.) That is
 25 simply not true. For example, there would be no equal protection violation if Defendant
 26 could offer an “exceedingly persuasive justification” for enforcing the surgical requirement.
 27 *See Hogan*, 458 U.S. at 723–24. That is precisely why Defendant’s justification is central
 28 to his defense to Plaintiffs’ constitutional claims. And, even if that assumption were
 embedded in Plaintiffs’ interrogatories, it still would not justify Defendant’s refusal to
 respond. Accepting Defendant’s argument would empower a defendant to ignore all
 discovery requests; by design, each request assumes that the defendant has violated the law,
 otherwise the request would not be relevant.

1 There is no basis for Defendant’s relevance objection. Plaintiffs’ equal protection
2 claim is based, in part, on Defendant’s policy or practice of permitting nontransgender
3 people to “correct” the sex listed on their birth certificates without surgical treatment. (*See*
4 *Am. Compl.* ¶ 56 (“ADHS does not impose the burdens of seeking a court order on
5 nontransgender people when correcting or amending an inaccurate sex marker on a birth
6 certificate. . . . ADHS developed a policy permitting it to change sex markers on Arizona
7 birth certificates with a physician’s letter attesting to the error.”) Nontransgender people
8 are simply required to submit a letter from a physician attesting to the error.⁷ The process
9 for transgender people to change the sex listed on their birth certificate is far more onerous.
10 (*See, e.g., Am. Compl.* ¶¶ 53–54). Plaintiffs’ interrogatory seeks information and
11 documents related to Defendant’s policies and practices for “corrections” to a birth record
12 in order to allow Plaintiffs to more fully compare and contrast the treatment of transgender
13 and nontransgender people who change the sex listed on their birth certificate, bolstering
14 their equal protection claim.

15 That information is also critical to Plaintiffs’ ability test the veracity and
16 persuasiveness of Defendant’s purported justification(s) for enforcing A.R.S. § 36-337. For
17 example, Defendant’s ability to change a nontransgender person’s sex listed on their birth
18 certificate without proof of surgery undermines any justification for imposing a surgical
19 requirement on transgender people. In fact, this Court previously recognized the relevance
20 of this issue, questioning whether obtaining a letter from a physician would be any more
21 “confusing, problematic, or burdensome than the current regime under A.R.S. § 36-
22 337(A)(3) and A.A.C. R9-19-208(O).” (Dkt. 83 at 15.) This is the precise question to
23 which Plaintiffs seek answers. Because Defendant has not articulated a proportionality or
24 burden objection, the Court should order Defendant to respond to the interrogatory as
25 written.

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⁷ In response to a public records request, ADHS produced a document showing that a sex
marker on a birth certificate was “corrected” based on a doctor’s note. (*See Ex. 5.*)

1 **C. Defendant Should Be Required to Search for and Produce ESI in Response to**
2 **Plaintiffs’ Requests for Production.**

3 As explained in further detail above, *see supra* II.B, Defendant responded to more
4 than ten separate document requests by stating that he “ha[d] not conducted a search of
5 available ESI but will do so once the parties have agreed to a search protocol.” (Ex. 4
6 (Supp. Responses to Document Requests Nos. 1–6, 10–13, 18).) Defendant has
7 categorically rejected Plaintiffs’ proposed search parameters and taken the position that the
8 ESI search terms in this action cannot be different from the search parameters that ADHS
9 used to respond to a public records request submitted—and completed—months before this
10 litigation began. Defendant has not provided any authority for this position, despite
11 repeated requests that he do so. Plaintiffs’ efforts to locate support for Defendant’s position
12 have been equally unavailing. To the extent Plaintiffs’ proposed ESI search parameters
13 returned documents that ADHS produced in response to the public records request,
14 Defendant nevertheless rejected Plaintiffs’ search parameters, despite the fact he was unable
15 to confirm how many additional documents exist.

16 Defendant subsequently informed Plaintiffs that he had done a cursory and limited
17 search to gauge the number of documents that satisfied Plaintiffs’ proposed search
18 parameters. After obtaining a large number of hits, Defendant demanded that Plaintiffs
19 reduce the number of search terms. Plaintiffs offered repeatedly to narrow the search terms
20 if Defendant would explain what he intends to offer as justifications for the challenged
21 statute and related regulations, as Plaintiffs’ current list of terms is based in part on what
22 they anticipate Defendant’s justifications to be. Defendants refused to do so.

23 In short, Defendant has refused to conduct a reasonable and proportional search for
24 ESI that is responsive to Plaintiffs’ requests and relevant to the claims and defenses in this
25 case. And, as noted in Section III.A, Defendant has denied Plaintiffs’ the information they
26 would need to meaningfully engage in a back-and-forth with Defendant about the search
27 parameters. Plaintiffs, however, cannot wait any longer and request that the Court order
28 Defendant to run Plaintiffs’ proposed search parameters, *see* Ex. 6, and produce non-

1 privileged, responsive documents promptly and without further delay.

2 **IV. CONCLUSION**

3 For the reasons set forth above, Plaintiffs respectfully request that the Court grant
4 their motion.

5 Respectfully submitted,

6 Dated: May 23, 2022

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7 *s/Colin Proksel*

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

15 HELEN ROE, a minor, by and through her
parent and next friend MEGAN ROE;
16 JAMES POE, a minor, by and through his
parent and next friend LAURA POE; AND
17 CARL VOE, a minor, by and through his
parent and next friend RACHEL VOE,

18 Plaintiffs,

19 v.

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

23 Defendant.

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

**PLAINTIFFS’ LRCIV 7.2(J)-(K)
AND 37.1 STATEMENT**

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1 Pursuant to Local Rule of Civil Procedure 7.2(j)-(k) and 37.1(a), Plaintiffs hereby
2 submit the following statement (the “Statement”) in support of Plaintiffs’ motion to compel.

3 **LRCIV 7.2(J)-(K) Statement**

4 Plaintiffs served their First Sets of Interrogatories and Requests for the Production
5 of Documents on October 15, 2021. (Exs. 1–2.)¹ Defendant served responses and
6 objections to the interrogatories and document requests on December 6, 2021 and
7 supplemented his responses on February 28, 2022. (Exs. 3–4.)

8 Plaintiffs first identified the issues raised in this motion in a letter to Defendant dated
9 January 25, 2022. Plaintiffs subsequently addressed these issues in correspondence dated
10 April 11, 2022, and April 28, 2022. Defendant addressed these issues in correspondence
11 dated April 5, 2022, April 25, 2022, and May 16, 2022. The parties met and conferred
12 telephonically about certain of these issues on February 22, 2022, and about all of them on
13 April 19, 2022.

14 While the parties have resolved other discovery disputes that have arisen in this case,
15 they have not been able to resolve the issues raised in this motion despite sincere, good-
16 faith efforts to do so.

17 **LRCIV 37.1 Statement**

18 **Plaintiffs’ Interrogatory No. 1**

19 1. **Request:** “List and describe each and every ADHS and/or BVR POLICY
20 CONCERNING a CHANGE or request to CHANGE the sex listed on a BIRTH RECORD.”

21 2. **Objection/Response:** “Objection: Vague, ambiguous, confusing, irrelevant,
22 and overbroad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH RECORD’ is
23 virtually unlimited in time and scope and encompasses documentation and/or information
24 that is not relevant to the claims or defenses in this lawsuit and is therefore unduly
25 burdensome and not proportional to the needs of this case. Defendant also objects to this
26 interrogatory as overbroad, unduly burdensome, and irrelevant because it seeks ‘each and

27 _____
28 ¹ All “Ex. ___” cites are to the Declaration of Colin M. Proksel, which has been filed
concurrently herewith.

1 every' ADHS and/or BVR policy concerning a 'CHANGE' or request to 'CHANGE' the
 2 sex listed on a birth record from January 1, 2004 to present, which encompasses information
 3 that is not relevant to the claims or defenses in this lawsuit or proportional to the needs of
 4 this case given that Plaintiffs' Amended Complaint is devoid of allegations regarding
 5 conduct and/or events that occurred before approximately 2019 and none of the named
 6 minor Plaintiffs were born before 2011. Defendant also objects to this interrogatory to the
 7 extent it seeks any and all policies concerning a 'CHANGE' or request to 'CHANGE' as
 8 Plaintiffs' definition of 'CHANGE' is vague, confusing, irrelevant, overbroad, unduly
 9 burdensome, and not proportional to the needs of the case in that it includes information
 10 related to 'corrections' to registered birth certificates defined in A.R.S. § 36-301(6), which
 11 are not 'amendments' governed by A.R.S. § 36-337 and are therefore not at issue in this
 12 case. Defendant will interpret 'CHANGE' to mean 'amend' as defined by A.R.S. § 36-
 13 301(2).

14 Without waiving these objections, the following iterations of BVR Policy No. 014,
 15 Amendments to Birth Records, concern amendments to registered birth certificates:

- 16 • Amendments to Birth Records, BVR Policy No. 014, Dated October 18, 2016.
 17 [ADHS000103 – ADHS000121]
- 18 • Amendments to Birth Records, BVR Policy No. 014, Dated January 23, 2017.
 19 [ADHS000122 – ADHS000140]
- 20 • Amendments to Birth Records, BVR Policy No. 014, Dated October 1, 2018.
 21 [ADHS000141 – ADHS000159]
- 22 • Amendments to Birth Records, BVR Policy No. 014, Dated March 28, 2019.
 23 [ADHS000160 – ADHS000178]
- 24 • Amendments to Birth Records, BVR Policy No. 014, Dated August 7, 2020.
 25 • [ADHS000007 – ADHS000023]

26 BVR Policy No. 014 is meant to provide guidance to hospitals, health care providers,
 27 county vital records offices, registrants, a registrants' legal guardian/parent, and BVR
 28 staff/employees for amending birth certificates.

1 See also Bureau of Vital Records Desk Procedure for Corrections and Amendments.
 2 [ADHS000287 – ADHS000293]. In addition, A.A.C. § R9-19-208 governs the process for
 3 amending information in a registered birth certificate in the State of Arizona. A prior version
 4 of this regulation was adopted in 2007 and amended in 2009 and most recently in 2016.”

5 **3. Reason for Deficiency:** Defendant has refused to identify all ADHS and
 6 BVR policies concerning changes to birth certificates. Defendant has argued that only
 7 policies relating to the “amendment” of a birth certificate are relevant to Plaintiff’s claims,
 8 and that policies relating to the “correction” of a birth certificate are outside the scope of
 9 the case. As set forth in the motion, Plaintiffs are entitled to learn about all policies relating
 10 to a “correction” to a “birth certificate.”

11 **Plaintiffs’ Interrogatory No. 9**

12 1. **Request:** “Describe and explain YOUR purported governmental interest(s)
 13 or other justification(s) under the Equal Protection Clause of the Fourteenth Amendment of
 14 the United States Constitution for denying transgender individuals who have not undergone
 15 a ‘sex change operation’ the ability to CHANGE the sex listed on their BIRTH RECORDS
 16 under subsection (A)(3) of Arizona Revised Statute section 36-337.”

17 2. **Objection/Response:** “Objection: Vague and ambiguous as to ‘purported
 18 governmental interest(s)’ and ‘other justification(s).’ Defendant objects to this interrogatory
 19 as improper because it requires Defendant to respond with a legal argument and an ultimate
 20 legal conclusion, and improperly seeks the mental impressions and legal conclusions of
 21 counsel for Defendant, which is protected by the attorney-client privilege and/or work-
 22 product doctrine. This interrogatory is vague, ambiguous, confusing, irrelevant, and
 23 overbroad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH RECORD’ is
 24 virtually unlimited in time and scope and encompasses documentation and/or information
 25 that is not relevant to the claims or defenses in this lawsuit and is therefore unduly
 26 burdensome and not proportional to the needs of the case. Defendant also objects to this
 27 interrogatory to the extent it seeks information concerning a ‘CHANGE,’ as Plaintiffs’
 28 definition of ‘CHANGE’ is vague, confusing, irrelevant, and overbroad, and includes

1 information related to ‘corrections’ to registered birth certificates defined in A.R.S. § 36-
2 310(6), which are not ‘amendments’ governed by A.R.S. § 36-337 and are therefore not at
3 issue in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,
4 and irrelevant as to the timeframe from January 1, 2004 to the present, which encompasses
5 information that is not relevant to the claims or defenses in this lawsuit or proportional to
6 the needs of this case given that Plaintiffs’ Amended Complaint is devoid of allegations
7 regarding conduct and/or events that occurred before approximately 2019 and none of the
8 named minor Plaintiffs were born before 2011. Moreover, a response to this interrogatory
9 requires an assumption that Plaintiffs’ equal protection rights have been violated when they
10 have not. In addition, Defendant denies that transgender individuals who have not
11 undergone a ‘sex change operation’ are prevented, excluded, or otherwise barred from
12 amending the sex marker listed on their registered birth certificates. All transgender
13 individuals in the State of Arizona have the opportunity to amend the sex listed on their
14 registered birth certificates by seeking a court order pursuant to A.R.S. § 36-337(A)(4).
15 Finally, this interrogatory seeks information regarding legislative intent, and the creation,
16 construction, and adoption of relevant Arizona statutes, as a ‘governmental interest’ and/or
17 ‘other justification’ could only have been considered by the Arizona Legislature prior to the
18 adoption of or any revision to A.R.S. § 36-337. The creation, construction, and adoption of
19 Arizona statutes is not a function of ADHS, and neither ADHS, nor Defendant, were
20 involved in or have ever been involved in this process. Accordingly, this interrogatory is
21 more appropriately suited for the Arizona Legislature and cannot be answered by Defendant.
22 No response is being provided. Defendant will consider supplementing this response should
23 Plaintiffs rephrase this Interrogatory so that it does not seek a legal conclusion.”

24 **3. Reason for Deficiency:** Defendant has refused to respond to this
25 interrogatory. As set forth in the motion, this request seeks information that is directly
26 relevant to Defendant’s defenses to Plaintiffs’ claim under the Equal Protection Clause of
27 the Fourteenth Amendment, and that plainly falls within the scope of permissible discovery
28 under Rule 26.

1 **Plaintiffs’ Interrogatory No. 10**

2 1. **Request:** “State all facts supporting YOUR response to Interrogatory No. 9.”

3 2. **Objection/Response:** “Defendant is not providing a response to this
4 interrogatory pursuant to the objections in Interrogatory No. 9, above. Defendant will
5 consider supplementing this response should Plaintiffs rephrase Interrogatory No. 9 so that
6 it does not seek a legal conclusion.”

7 3. **Reason for Deficiency:** *See* Plaintiffs’ Interrogatory No. 9.

8 **Plaintiffs’ Interrogatory No. 11**

9 1. **Request:** “Describe and explain YOUR purported governmental interest(s)
10 or other justification(s) under the Substantive Due Process Right to Privacy of the
11 Fourteenth Amendment of the United States Constitution for denying transgender
12 individuals who have not undergone a “sex change operation” the ability to CHANGE the
13 sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona Revised Statute
14 section 36-337.”

15 2. **Objection/Response:** “Objection: Vague and ambiguous as to ‘purported
16 governmental interest(s)’ and ‘other justification(s).’ Defendant objects to this interrogatory
17 as improper because it requires Defendant to respond with a legal argument and an ultimate
18 legal conclusion, and improperly seeks the mental impressions and legal conclusions of
19 counsel for Defendant, which is protected by the attorney-client privilege and/or work-
20 product doctrine. This interrogatory is vague, ambiguous, confusing, irrelevant, and over
21 broad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH RECORD’ is virtually
22 unlimited in time and scope and encompasses documentation and/or information that is not
23 relevant to the claims or defenses in this lawsuit and is therefore unduly burdensome and
24 not proportional to the needs of this case. Defendant also objects to this interrogatory to the
25 extent it seeks information concerning a ‘CHANGE,’ as Plaintiffs’ definition of ‘CHANGE’
26 is vague, confusing, irrelevant, and overbroad, and includes information related to
27 ‘corrections’ to registered birth certificates defined in A.R.S. § 36-301(6), which are not
28 ‘amendments’ governed by A.R.S. § 36-337 and are therefore not at issue in this case.

1 Defendant objects to this interrogatory as overbroad, unduly burdensome, and irrelevant as
2 to the timeframe from January 1, 2004 to the present, which encompasses information that
3 is not relevant to the claims or defenses in this lawsuit or proportional to the needs of this
4 case given that Plaintiffs' Amended Complaint is devoid of allegations regarding conduct
5 and/or events that occurred before approximately 2019 and none of the named minor
6 Plaintiffs were born before 2011. Moreover, Plaintiffs do not have a recognized substantive
7 due process right under the Fourteenth Amendment of the United States Constitution to
8 amend their birth certificates free of administrative or judicial processes and answering this
9 interrogatory requires an assumption that Plaintiffs' substantive due process rights have
10 been violated when they have not. In addition, Defendant denies that transgender
11 individuals who have not undergone a 'sex change operation' are prevented, excluded, or
12 otherwise barred from amending the sex marker listed on their registered birth certificates.
13 All transgender individuals in the State of Arizona have the opportunity to amend the sex
14 listed on their registered birth certificates by seeking a court order pursuant to A.R.S. § 36-
15 337(A)(4). Finally, this interrogatory seeks information regarding legislative intent, and the
16 creation, construction, and adoption of relevant Arizona statutes, as a 'governmental interest'
17 and/or 'other justification' could only have been considered by the Arizona Legislature
18 prior to the adoption of or any revision to A.R.S. § 36-337. The creation, construction, and
19 adoption of Arizona statutes is not a function of ADHS, and neither ADHS, nor Defendant,
20 were involved in or have ever been involved in this process. Accordingly, this interrogatory
21 is more appropriately suited for the Arizona Legislature and cannot be answered by
22 Defendant. No response is being provided. Defendant will consider supplementing this
23 response should Plaintiffs rephrase this Interrogatory so that it does not seek a legal
24 conclusion."

25 3. **Reason for Deficiency:** Defendant has refused to respond to this
26 interrogatory. As set forth in the motion, this request seeks information that is directly
27 relevant to Defendant's defenses to Plaintiffs' claims under the Due Process Clause of the
28

1 Fourteenth Amendment, and that plainly falls within the scope of permissible discovery
2 under Rule 26.

3 **Plaintiffs' Interrogatory No. 12**

4 1. **Request:** "State all facts supporting YOUR response to Interrogatory No. 11."

5 2. **Objection/Response:** "Defendant is not providing a response to this
6 interrogatory pursuant to the objections to Interrogatory No. 11, above. *Defendant will*
7 *consider supplementing this response should Plaintiffs rephrase Interrogatory No. 11 so*
8 *that it does not seek a legal conclusion.*"

9 3. **Reason for Deficiency:** *See* Plaintiffs' Interrogatory No. 11.

10 **Plaintiffs' Interrogatory No. 13**

11 1. **Request:** "Describe and explain YOUR purported governmental interest(s)
12 or other justification(s) under the Substantive Due Process Right to Individual Liberty and
13 Autonomy of the Fourteenth Amendment of the United States Constitution for denying
14 transgender individuals who have not undergone a 'sex change operation' the ability to
15 CHANGE the sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona
16 Revised Statute section 36-337."

17 2. **Objection/Response:** "Objection: Vague and ambiguous as to 'purported
18 governmental interest(s)' and 'other justification(s).' Defendant objects to this interrogatory
19 as improper because it requires Defendant to respond with a legal argument and an ultimate
20 legal conclusion, and improperly seeks the mental impressions and legal conclusions of
21 counsel for Defendant, which is protected by the attorney-client privilege and/or work-
22 product doctrine. This interrogatory is vague, ambiguous, confusing, irrelevant, and
23 overbroad as to 'BIRTH RECORD,' as Plaintiffs' definition of 'BIRTH RECORD' is
24 virtually unlimited in time and scope and encompasses documentation and/or information
25 that is not relevant to the claims or defenses in this lawsuit and is therefore unduly
26 burdensome and not proportional to the needs of this case. Defendant also objects to this
27 interrogatory to the extent it seeks information concerning a 'CHANGE,' as Plaintiffs'
28 definition of 'CHANGE' is vague, confusing, irrelevant, and overbroad, and includes

1 information related to ‘corrections’ to registered birth certificates defined in A.R.S. § 36-
2 301(6), which are not ‘amendments’ governed by A.R.S. § 36-337 and are therefore not at
3 issue in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,
4 and irrelevant as to the timeframe from January 1, 2004 to the present, which encompasses
5 information that is not relevant to the claims or defenses in this lawsuit or proportional to
6 the needs of this case given that Plaintiffs' Amended Complaint is devoid of allegations
7 regarding conduct and/or events that occurred before approximately 2019 and none of the
8 named minor Plaintiffs were born before 2011. Moreover, Plaintiffs do not have a
9 recognized substantive due process right under the Fourteenth Amendment of the United
10 States Constitution to amend their birth certificates free of administrative or judicial
11 processes and answering this interrogatory requires an assumption that Plaintiffs'
12 substantive due process rights have been violated when they have not. In addition,
13 Defendant denies that transgender individuals who have not undergone a ‘sex change
14 operation’ are prevented, excluded, or otherwise barred from amending the sex marker
15 listed on their registered birth certificates. All transgender individuals in the State of
16 Arizona have the opportunity to amend the sex listed on their registered birth certificates by
17 seeking a court order pursuant to A.R.S. § 36-337(A)(4). Finally, this interrogatory seeks
18 information regarding legislative intent, and the creation, construction, and adoption of
19 relevant Arizona statutes, as a ‘governmental interest’ and/or ‘other justification’ could only
20 have been considered by the Arizona Legislature prior to the adoption of or any revision to
21 A.R.S. § 36-337. The creation, construction, and adoption of Arizona statutes is not a
22 function of ADHS, and neither ADHS, nor Defendant, were involved in or have ever been
23 involved in this process. Accordingly, this interrogatory is more appropriately suited for the
24 Arizona Legislature and cannot be answered by Defendant. No response is being provided.
25 Defendant will consider supplementing this response should Plaintiffs rephrase this
26 Interrogatory so that it does not seek a legal conclusion.”

27 3. **Reason for Deficiency:** *See* Plaintiffs’ Interrogatory No. 11.
28

1 **Plaintiffs’ Interrogatory No. 14**

2 1. **Request:** “State all facts supporting YOUR response to Interrogatory No. 13.”

3 2. **Objection/Response:** “Defendant is not providing a response to this
4 interrogatory pursuant to the objections to Interrogatory No. 13, above. Defendant will
5 consider supplementing this response should Plaintiffs rephrase Interrogatory No. 13 so that
6 it does not seek a legal conclusion.”

7 3. **Reason for Deficiency:** *See* Plaintiffs’ Interrogatory No. 11.

8 **Plaintiffs’ Interrogatory No. 15**

9 1. **Request:** “Describe and explain YOUR purported governmental interest(s)
10 or other justification(s) under the Substantive Due Process Right to choose whether to
11 undergo a particular medical treatment of the Fourteenth Amendment of the United States
12 Constitution for denying transgender individuals who have not undergone a ‘sex change
13 operation’ the ability to CHANGE the sex listed on their BIRTH RECORDS under
14 subsection (A)(3) of Arizona Revised Statute section 36-337.”

15 2. **Objection/Response:** “Objection: Vague and ambiguous as to ‘purported
16 governmental interest(s)’ and ‘other justification(s).’ Defendant objects to this interrogatory
17 as improper because it requires Defendant to respond with a legal argument and an ultimate
18 legal conclusion, and improperly seeks the mental impressions and legal conclusions of
19 counsel for Defendant, which is protected by the attorney-client privilege and/or work-
20 product doctrine. This interrogatory is vague, ambiguous, confusing, irrelevant, and
21 overbroad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH RECORD’ is
22 virtually unlimited in time and scope and encompasses documentation and/or information
23 that is not relevant to the claims or defenses in this lawsuit and is therefore unduly
24 burdensome and not proportional to the needs of this case. Defendant also objects to this
25 interrogatory to the extent it seeks information concerning a ‘CHANGE,’ as Plaintiffs’
26 definition of ‘CHANGE’ is vague, confusing, irrelevant, and overbroad, and includes
27 information related to ‘corrections’ to registered birth certificates defined in A.R.S. § 36-
28 301(6), which are not ‘amendments’ governed by A.R.S. § 36-337 and are therefore not at

1 issue in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,
2 and irrelevant as to the time frame from January 1, 2004 to the present, which encompasses
3 information that is not relevant to the claims or defenses in this lawsuit or proportional to
4 the needs of this case given that Plaintiffs' Amended Complaint is devoid of allegations
5 regarding conduct and/or events that occurred before approximately 2019 and none of the
6 named minor Plaintiffs were born before 2011. Moreover, Plaintiffs do not have a
7 recognized substantive due process right under the Fourteenth Amendment of the United
8 States Constitution to amend their birth certificates free of administrative or judicial
9 processes, nor do they have a substantive due process right to "choose whether to undergo
10 a particular medical treatment." Thus, answering this interrogatory requires an assumption
11 that Plaintiffs' substantive due process rights have been violated when they have not. In
12 addition, Defendant denies that transgender individuals who have not undergone a "sex
13 change operation" are prevented, excluded, or otherwise barred from amending the sex
14 marker listed on their registered birth certificates. All transgender individuals in the State
15 of Arizona have the opportunity to amend the sex listed on their registered birth certificates
16 by seeking a court order pursuant to A.R.S. § 36-337(A)(4). Finally, this interrogatory seeks
17 information regarding legislative intent, and the creation, construction, and adoption of
18 relevant Arizona statutes, as a 'governmental interest' and/or 'other justification' could only
19 have been considered by the Arizona Legislature prior to the adoption of or any revision to
20 A.R.S. § 36-337. The creation, construction, and adoption of Arizona statutes is not a
21 function of ADHS, and neither ADHS, nor Defendant, were involved in or have ever been
22 involved in this process. Accordingly, this interrogatory is more appropriately suited for the
23 Arizona Legislature and cannot be answered by Defendant. No response is being provided.
24 Defendant will consider supplementing this response should Plaintiffs rephrase this
25 Interrogatory so that it does not seek a legal conclusion."

26 3. **Reason for Deficiency:** *See* Plaintiffs' Interrogatory No. 11.

27 **Plaintiffs' Interrogatory No. 16**

28 1. **Request:** "State all facts supporting YOUR response to Interrogatory No. 15."

1 2. **Objection/Response:** “Defendant is not providing a response to this
2 interrogatory pursuant to the objections to Interrogatory No. 15, above. Defendant will
3 consider supplementing this response should Plaintiffs rephrase Interrogatory No. 15 so that
4 it does not seek a legal conclusion.”

5 3. **Reason for Deficiency:** *See* Plaintiffs’ Interrogatory No. 11.

6 **Plaintiffs’ Request for Production No. 14**

7 1. **Request:** “All DOCUMENTS and COMMUNICATIONS CONCERNING
8 YOUR purported governmental interest(s) or other justification(s) under the Equal
9 Protection Clause of the Fourteenth Amendment of the United States Constitution for
10 denying transgender individuals who have not undergone a ‘sex change operation’ the
11 ability to CHANGE the sex listed on their BIRTH RECORDS under subsection (A)(3) of
12 Arizona Revised Statute section 36-337.”

13 2. **Objection/Response:** “Objection: Vague, ambiguous, and overbroad as to
14 ‘purported governmental interest(s)’ and ‘other justification(s)’ as these terms are not
15 reasonably limited in scope or meaning. This Request is vague, ambiguous, confusing,
16 irrelevant, and overbroad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH
17 RECORD’ is virtually unlimited in time and scope and encompasses documentation and/or
18 information that is not relevant to the claims or defenses in this lawsuit and is therefore
19 unduly burdensome and not proportional to the needs of this case. Defendant also objects
20 to this Request to the extent it seeks information concerning a ‘CHANGE,’ as Plaintiffs’
21 definition of ‘CHANGE’ is vague, confusing, irrelevant, and overbroad, and includes
22 information related to ‘corrections’ to registered birth certificates defined in A.R.S. § 36-
23 301(6), which are not ‘amendments’ governed by A.R.S. § 36-337 and are therefore not at
24 issue in this case. Defendant also objects to this Request as overbroad, unduly burdensome,
25 and irrelevant as to the timeframe from January 1, 2004 to the present, which encompasses
26 information that is not relevant to the claims or defenses in this lawsuit or proportional to
27 the needs of this case given that Plaintiffs’ Amended Complaint is devoid of allegations
28 regarding conduct and/or events that occurred before approximately 2019 and none for the

1 named minor Plaintiffs were born before 2011. Defendant objects to the extent this Request
2 seeks information protected by the attorney-client privilege, the work product doctrine, the
3 deliberative process privilege, and/or any other applicable privilege. Defendant further
4 objects to the Request as it seeks production of ESI which can only be discovered through
5 an email or system search and where the parties have not conferred or attempted to reach
6 an agreement on a search protocol, including appropriate search terms and queries, file type
7 and date restrictions, data sources, and custodians. Moreover, a response to this Request
8 requires an assumption that Plaintiffs' equal protection rights have been violated when they
9 have not. In addition, Defendant denies that transgender individuals who have not
10 undergone a 'sex change operation' are prevented, excluded, or otherwise barred from
11 amending the sex marker listed on their registered birth certificates. All transgender
12 individuals in the State of Arizona have the opportunity to amend the sex listed on their
13 registered birth certificates by seeking a court order pursuant to A.R.S. § 36-337(A)(4).
14 Finally, this Request seeks documentation and/or information regarding legislative intent,
15 and the creation, construction, and adoption of relevant Arizona statutes, as 'governmental
16 interest' and/or 'other justification' could only have been considered by the Arizona
17 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,
18 construction, and adoption of Arizona statutes is not a function of ADHS, and neither
19 ADHS, nor Defendant, were involved in or have ever been involved in this process.
20 Accordingly, this Request is more appropriately suited for the Arizona Legislature and
21 cannot be answered by Defendant. No response is being provided. Defendant will consider
22 supplementing this response should Plaintiffs rephrase this Request so that it does not seek
23 information regarding a legal conclusion."

24 3. **Reason for Deficiency:** *See* Plaintiffs' Interrogatory No. 9.

25 **Plaintiffs' Request for Production No. 15**

26 1. **Request:** "All DOCUMENTS and COMMUNICATIONS CONCERNING
27 YOUR purported governmental interest(s) or other justification(s) under the Substantive
28 Due Process Right to Privacy of the Fourteenth Amendment of the United States

1 Constitution for denying transgender individuals who have not undergone a ‘sex change
2 operation’ the ability to CHANGE the sex listed on their BIRTH RECORDS under
3 subsection (A)(3) of Arizona Revised Statute section 36-337.”

4 2. **Objection/Response:** “Objection: Vague, ambiguous, and overbroad as to
5 ‘purported governmental interest(s)’ and ‘other justification(s)’ as these terms are not
6 reasonably limited in scope or meaning. This Request is vague, ambiguous, confusing,
7 irrelevant, and overbroad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH
8 RECORD’ is virtually unlimited in time and scope and encompasses documentation and/or
9 information that is not relevant to the claims or defenses in this lawsuit and is therefore
10 unduly burdensome and not proportional to the needs of this case. Defendant also objects
11 to this Request to the extent it seeks any and all information concerning a ‘CHANGE,’ as
12 Plaintiffs’ definition of ‘CHANGE’ is vague, confusing, irrelevant, and overbroad, and
13 includes information related to ‘corrections’ to registered birth certificates defined in A.R.S.
14 § 36-301(6), which are not ‘amendments’ governed by A.R.S. § 36-337 and are therefore
15 not at issue in this case. Defendant also objects to this Request as overbroad, unduly
16 burdensome, and irrelevant as to the timeframe from January 1, 2004 to the present, which
17 encompasses information that is not relevant to the claims or defenses in this lawsuit or
18 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
19 of allegations regarding conduct and/or events that occurred before approximately 2019 and
20 none for the named minor Plaintiffs were born before 2011. Defendant objects to the extent
21 this Request seeks information protected by the attorney-client privilege, the work product
22 doctrine, the deliberative process privilege, and/or any other applicable privilege.
23 Defendant further objects to the Request as it seeks production of ESI which can only be
24 discovered through an email or system search and where the parties have not conferred or
25 attempted to reach an agreement on a search protocol, including appropriate search terms
26 and queries, file type and date restrictions, data sources, and custodians. Moreover,
27 Plaintiffs do not have a recognized substantive due process right under the Fourteenth
28 Amendment of the United States Constitution to amend their birth certificates free of

1 administrative or judicial processes and answering this Request requires an assumption that
 2 Plaintiffs’ substantive due process rights have been violated when they have not. In addition,
 3 Defendant denies that transgender individuals who have not undergone a ‘sex change
 4 operation’ are prevented, excluded, or otherwise barred from amending the sex marker
 5 listed on their registered birth certificates. All transgender individuals in the State of
 6 Arizona have the opportunity to amend the sex listed on their registered birth certificates by
 7 seeking a court order pursuant to A.R.S. § 36-337(A)(4). Finally, this Request seeks
 8 documentation and/or information regarding legislative intent, and the creation,
 9 construction, and adoption of relevant Arizona statutes, as a ‘governmental interest’ and/or
 10 ‘other justification’ could only have been considered by the Arizona Legislature prior to the
 11 adoption of or any revision to A.R.S. § 36-337. The creation, construction, and adoption of
 12 Arizona statutes is not a function of ADHS, and neither ADHS, nor Defendant, were
 13 involved in or have ever been involved in this process. Accordingly, this Request is more
 14 appropriately suited for the Arizona Legislature and cannot be answered by Defendant. No
 15 response is being provided. Defendant will consider supplementing this response should
 16 Plaintiffs rephrase this Request so that it does not seek information regarding a legal
 17 conclusion.”

18 3. **Reason for Deficiency:** *See* Plaintiffs’ Interrogatory No. 11

19 **Plaintiffs’ Request for Production No. 16**

20 1. **Request:** “All DOCUMENTS and COMMUNICATIONS CONCERNING
 21 YOUR purported governmental interest(s) or other justification(s) under the Substantive
 22 Due Process Right to Individual Liberty and Autonomy of the Fourteenth Amendment of
 23 the United States Constitution for denying transgender individuals who have not undergone
 24 a ‘sex change operation’ the ability to CHANGE the sex listed on their BIRTH RECORDS
 25 under subsection (A)(3) of Arizona Revised Statute section 36-337.”

26 2. **Objection/Response:** “Objection: Vague, ambiguous, and overbroad as to
 27 ‘purported governmental interest(s)’ and ‘other justification(s)’ as these terms are not
 28 reasonably limited in scope or meaning. This Request is vague, ambiguous, confusing,

1 irrelevant, and overbroad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH
2 RECORD’ is virtually unlimited in time and scope and encompasses documentation and/or
3 information that is not relevant to the claims or defenses in this lawsuit and is therefore
4 unduly burdensome and not proportional to the needs of this case. Defendant also objects
5 to this Request to the extent it seeks information concerning a ‘CHANGE,’ as Plaintiffs’
6 definition of ‘CHANGE’ is vague, confusing, irrelevant, and overbroad, and includes
7 information related to ‘corrections’ to registered birth certificates defined in A.R.S. § 36-
8 301(6), which are not ‘amendments’ governed by A.R.S. § 36-337 and are therefore not at
9 issue in this case. Defendant objects to this Request as overbroad, unduly burdensome, and
10 irrelevant as to the timeframe from January 1, 2004 to the present, which encompasses
11 information that is not relevant to the claims or defenses in this lawsuit or proportional to
12 the needs of this case given that Plaintiffs’ Amended Complaint is devoid of allegations
13 regarding conduct and/or events that occurred before approximately 2019 and none of the
14 named minor Plaintiffs were born before 2011. Defendant objects to the extent this Request
15 seeks information protected by the attorney-client privilege, the work product doctrine, the
16 deliberative process privilege, and/or any other applicable privilege. Defendant further
17 objects to the Request as it seeks production of ESI which can only be discovered through
18 an email or system search and where the parties have not conferred or attempted to reach
19 an agreement on a search protocol, including appropriate search terms and queries, file type
20 and date restrictions, data sources, and custodians. Moreover, Plaintiffs do not have a
21 recognized substantive due process right under the Fourteenth Amendment of the United
22 States Constitution to amend their birth certificates free of administrative or judicial
23 processes and answering this Request requires an assumption that Plaintiffs’ substantive
24 due process rights have been violated when they have not. In addition, Defendant denies
25 that transgender individuals who have not undergone a ‘sex change operation’ are prevented,
26 excluded, or otherwise barred from amending the sex marker listed on their registered birth
27 certificates. All transgender individuals in the State of Arizona have the opportunity to
28 amend the sex listed on their registered birth certificates by seeking a court order pursuant

1 to A.R.S. § 36-337(A)(4). Finally, this Request seeks information regarding legislative
 2 intent, and the creation, construction, and adoption of relevant Arizona statutes, as a
 3 ‘governmental interest’ and/or ‘other justification’ could only have been considered by the
 4 Arizona Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The
 5 creation, construction, and adoption of Arizona statutes is not a function of ADHS, and
 6 neither ADHS, nor Defendant, were involved in or have ever been involved in this process.
 7 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature and
 8 cannot be answered by Defendant. No response is being provided. Defendant will consider
 9 supplementing this response should Plaintiffs rephrase this Request so that it does not seek
 10 information regarding a legal conclusion.”

11 3. **Reason for Deficiency:** *See* Plaintiffs’ Interrogatory No. 11.

12 **Plaintiffs’ Request for Production No. 17**

13 1. **Request:** “All DOCUMENTS and COMMUNICATIONS CONCERNING
 14 YOUR purported governmental interest(s) or other justification(s) under the Substantive
 15 Due Process Right to choose whether to undergo a particular medical treatment of the
 16 Fourteenth Amendment of the United States Constitution for denying transgender
 17 individuals who have not undergone a “sex change operation” the ability to CHANGE the
 18 sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona Revised Statute
 19 section 36-337.”

20 2. **Objection/Response:** “Objection: Vague, ambiguous, and overbroad as to
 21 ‘purported governmental interest(s)’ and ‘other justification(s)’ as these terms are not
 22 reasonably limited in scope or meaning. This Request is vague, ambiguous, confusing,
 23 irrelevant, and overbroad as to ‘BIRTH RECORD,’ as Plaintiffs’ definition of ‘BIRTH
 24 RECORD’ is virtually unlimited in time and scope and encompasses documentation and/or
 25 information that is not relevant to the claims or defenses in this lawsuit and is therefore
 26 unduly burdensome and not proportional to the needs of this case. Defendant also objects
 27 to this Request to the extent it seeks any and all policies concerning a ‘CHANGE,’ as
 28 Plaintiffs’ definition of ‘CHANGE’ is vague, confusing, irrelevant, and overbroad, and

1 includes information related to ‘corrections’ to registered birth certificates defined in A.R.S.
2 § 36-301(6), which are not ‘amendments’ governed by A.R.S. § 36-337 and are therefore
3 not at issue in this case. Defendant also objects to this Request as overbroad, unduly
4 burdensome, and irrelevant as to the timeframe from January 1, 2004 to the present, which
5 encompasses information that is not relevant to the claims or defenses in this lawsuit or
6 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
7 of allegations regarding conduct and/or events that occurred before approximately 2019 and
8 none for the named minor Plaintiffs were born before 2011. Defendant objects to the extent
9 this Request seeks information protected by the attorney-client privilege, the work product
10 doctrine, and/or any other applicable privilege. Defendant further objects to the Request as
11 it seeks production of ESI which can only be discovered through an email or system search
12 and where the parties have not conferred or attempted to reach an agreement on a search
13 and where the parties have not conferred or attempted to reach an agreement on a search
14 protocol, including appropriate search terms and queries, file type and date restrictions, data
15 sources, and custodians. Moreover, Plaintiffs do not have a recognized substantive due
16 process right under the Fourteenth Amendment of the United States Constitution to amend
17 their birth certificates free of administrative or judicial processes, nor do they have a
18 substantive due process right to ‘choose whether to undergo a particular medical treatment.’
19 Thus, answering this interrogatory requires an assumption that Plaintiffs’ substantive due
20 process rights have been violated when they have not. In addition, Defendant denies that
21 transgender individuals who have not undergone a ‘sex change operation’ are prevented,
22 excluded, or otherwise barred from amending the sex marker listed on their registered birth
23 certificates. All transgender individuals in the State of Arizona have the opportunity to
24 amend the sex listed on their registered birth certificates by seeking a court order pursuant
25 to A.R.S. § 36-337(A)(4). Finally, this Request seeks information regarding legislative
26 intent, and the creation, construction, and adoption of relevant Arizona statutes. A
27 ‘governmental interest’ and/or ‘other justification’ could only have been considered by the
28 Arizona Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The

1 creation, construction, and adoption of Arizona statutes is not a function of ADHS, and
2 neither ADHS, nor Defendant, were involved in or have ever been involved in this process.
3 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature and
4 cannot be answered by Defendant. No response is being provided. Defendant will consider
5 supplementing this response should Plaintiffs rephrase this Request so that it does not seek
6 information regarding a legal conclusion.”

7 3. **Reason for Deficiency:** *See* Plaintiffs’ Interrogatory No. 11.

8
9 Respectfully submitted,

10 Dated: May 24, 2022

OSBORN MALEDON, P.A.

11 *s/Colin M. Proksel*

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Additional counsel listed on following page

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

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

18 Plaintiffs,

19 v.

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

23 Defendant.

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

**DECLARATION OF COLIN M.
PROKSEL IN SUPPORT OF
PLAINTIFFS’ MOTION TO
COMPEL RESPONSES TO
INTERROGATORIES AND
PRODUCTION OF DOCUMENTS**

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9 *Attorneys for Plaintiffs and Proposed Class*
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1 I, Colin M. Proksel, declare:

2 1. I am a lawyer at Osborn Maledon, P.A., attorneys of record for Plaintiffs and
3 Proposed Class. The following statements are true and to the best of my knowledge,
4 information, and belief, formed after a reasonable inquiry under the circumstances. If called
5 to testify about them, I would competently testify the same.

6 2. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs' First Set
7 of Interrogatories, which was served on October 15, 2021.

8 3. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs' First Set
9 of Requests for the Production of Documents, which was served on October 15, 2021.

10 4. Attached hereto as Exhibit 3 is a true and correct copy of Defendant's First
11 Supplemental Responses to Plaintiff's First Set of Interrogatories, which were served on
12 February 28, 2022.

13 5. Attached hereto as Exhibit 4 is a true and correct copy of Defendant's First
14 Supplemental Responses to Plaintiff's First Set of Requests for the Production of
15 Documents, which were served on February 28, 2022.

16 6. Attached hereto as Exhibit 5 is a true and correct copy of an email from Toni
17 Miller, the Policy Manager & Community Partner Liaison of the Bureau of Vital Statistics
18 in the Arizona Department of Health Services ("ADHS"), dated September 5, 2018, which
19 was produced by ADHS in response to a public records request.

20 7. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiffs' proposed
21 ESI search parameters, which were first sent to Defendant on January 25, 2022.

22
23 I declare under penalty of perjury of the laws of the United States that the foregoing
24 is true and correct.

25 Dated: May 24, 2022

26
27 s/ Colin M. Proksel

28

EXHIBIT 1

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Additional counsel listed on following page

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

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

18 Plaintiffs,

19 v.

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

23 Defendant.

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

**PLAINTIFFS' FIRST SET OF
INTERROGATORIES**

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28

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1 **PROPOUNDING PARTY: HELEN ROE, JAMES POE, AND CARL VOE**

2 **RESPONDING PARTY: DON HERRINGTON**

3 **SET NUMBER: ONE**

4 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Local Rule
5 33.1 of the U.S. District Court for the District of Arizona, Plaintiff Helen Roe, James Poe, and
6 Carl Voe (“Plaintiffs”) requests that Defendant Don Herrington (“Defendant”) answer
7 separately and completely in writing under oath within 30 days of service hereof each of the
8 Interrogatories set forth below in accordance with the following Definitions and Instructions:

9 **I. DEFINITIONS**

10 1. **ACTION** means the above-captioned litigation instituted by Plaintiffs on
11 November 4, 2020.

12 2. **ARIZONA DEPARTMENT OF HEALTH SERVICES (“ADHS”)** means the state
13 agency of Arizona responsible for providing health services to Arizona’s population, including
14 creating and maintaining a system of vital records, and includes each of its branches, divisions,
15 or committees and each of its officers, employees, affiliates, attorneys, accountants,
16 consultants, representatives, and agents.

17 3. **BIRTH RECORD** means a **DOCUMENT** or other information created or maintained
18 by **YOU CONCERNING** a person’s birth, including but not limited to a written registered birth
19 certificate, documents supporting a requested amendment or correction, or related information
20 in an electronic database.

21 4. **BUREAU OF VITAL RECORDS (“BVR”)** means the division of ADHS responsible
22 for maintaining and issuing certified copies of vital records, and includes each of its officers,
23 employees, affiliates, attorneys, accountants, consultants, representatives, and agents.

24 5. **CHANGE** means any amendment, addition, alteration, deletion, correction,
25 modification, or substitution.

26 6. **COMMUNICATION** is used in its broadest sense and means any transmission of
27 information from one **PERSON** to another by any means in the form of facts, ideas, inquiries,
28 or otherwise.

1 7. COMPLAINT refers to the Amended Complaint, (Doc. 47), filed by Plaintiffs in
2 this ACTION on January 8, 2020.

3 8. CONCERNING is used in its broadest sense to require information, things,
4 COMMUNICATIONS, or DOCUMENTS that reflect, relate to, identify, constitute, embody,
5 describe, discuss, summarize, evidence, reference, comment on, or concern in any way the
6 subject matter of the request.

7 9. DOCUMENT is used in its broadest sense and means any written, printed, typed,
8 recorded, magnetic, punched, copied, graphic, or other tangible thing in, upon, or from which
9 information may be embodied, translated, conveyed, or stored (including, but not limited to,
10 correspondence, memoranda, notes, records, books, written policies, papers, PowerPoints,
11 telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs,
12 computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs,
13 charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule
14 of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence
15 1001, whether or not labeled “confidential.” A draft or non-identical copy is a separate
16 DOCUMENT within the meaning of this term.

17 10. PERSON means any natural person or any business, legal, or governmental entity
18 or association or any other cognizable entity, including, without limitation, corporations,
19 proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations,
20 governmental agencies or instrumentalities, societies and orders.

21 11. POLICY is used in its broadest sense and means any past, present, or
22 contemplated future policy, procedure, rule, protocol, guideline, regulation, practice, or other
23 principle or course of action, whether or not in writing.

24 12. YOU, YOUR, or YOURS mean Don Herrington in his official capacity as Interim
25 State Registrar of Vital Records and Director of ADHS, and includes each of the officers,
26 directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants,
27 consultants, representatives, and agents that report to him in his official capacity. It also means
28 any PERSON who previously exercised or later exercises any of Mr. Herrington’s official

1 positions or responsibilities in whole or in part, whether temporarily or permanently.

2 **13.** A request to IDENTIFY EACH DOCUMENT means to provide a description
3 sufficient to identify the DOCUMENT in YOUR production of documents, such as a Bates
4 number, or information sufficient to obtain production thereof by subpoena, discovery request,
5 or court order, including:

6 (a) The name and current business or residential address of the individual or
7 individuals who (i) prepared it, (ii) signed it or under whose signature it was issued, and (iii)
8 to whom it was addressed or distributed;

9 (b) The title and nature of its contents;

10 (c) The date appearing on it and the date or dates when it was prepared; and

11 (d) The current physical location of it.

12 **ALTERNATIVELY,** YOU may identify any DOCUMENT by instead attaching a full, clear,
13 legible copy thereof to your response hereto, provided that each such copy contains a reference
14 to each Interrogatory to which it is responsive.

15 **14.** A request to IDENTIFY EACH COMMUNICATION means to:

16 (a) State the date and place of each such COMMUNICATION;

17 (b) State the medium through which such COMMUNICATION was made (*e.g.*,
18 in person, by telephone, by electronic mail or means, etc.);

19 (c) IDENTIFY EACH PERSON who participated in the COMMUNICATION;

20 (d) IDENTIFY EACH PERSON (other than a participant) who heard or had
21 access to the COMMUNICATION;

22 (e) State the substance of the COMMUNICATION, including any discussion
23 constituting or regarding the COMMUNICATION, the order in which such discussion was had,
24 and any decisions or conclusions reached in the course of or as a result of the
25 COMMUNICATION; and

26 (f) IDENTIFY EACH DOCUMENT reflecting or CONCERNING the substance of
27 the COMMUNICATION.

28 **15.** A request to IDENTIFY EACH PERSON refers to each natural PERSON or entity and

1 means to provide such PERSON'S or entity's full name and the current business or employment
2 address and, if a natural PERSON, such PERSON'S residence address and telephone number.

3 **II. INSTRUCTIONS**

4 1. If an Interrogatory is silent as to the time period for which information is sought,
5 YOUR response should include all information known to you CONCERNING events that
6 occurred, in whole or in part, at any time during the period of January 1, 2004 to the present.

7 2. YOU are requested to answer each Interrogatory set forth below in the provided
8 space and completely in writing under oath pursuant to Local Rule 33.1(a). YOUR response
9 hereto is to be signed and verified by the PERSON making it, and the objections signed by the
10 attorney making them, as required by Federal Rule of Civil Procedure 33(b).

11 3. Each Interrogatory shall be answered fully unless it is objected to in good faith,
12 in which event the reasons for YOUR objection shall be stated in detail in writing. If an
13 objection pertains to only a portion of an Interrogatory, or a word, phrase or clause contained
14 within it, YOU are required to state YOUR objection to that portion only and to respond to the
15 remainder of the Interrogatory, using YOUR best efforts to do so.

16 4. If YOU or YOUR counsel assert that any information responsive to any
17 Interrogatory is privileged or otherwise protected from discovery, YOU must comply with the
18 requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT, thing, oral
19 COMMUNICATION or piece of information for which a claim of privilege or protection from
20 discovery is made. For any DOCUMENT, COMMUNICATION, or other information withheld on
21 the grounds that it is privileged or otherwise claimed to be excludable from discovery, identify
22 the information, describe its subject matter and date, identify all authors and all recipients
23 (including copied and blind copied recipients), and specify the basis for the claimed privilege
24 or other grounds of exclusion.

25 5. If YOU answer any of the Interrogatories by reference to records from which the
26 answer may be derived or ascertained, YOU must comply with the requirements of Federal
27 Rule of Civil Procedure 33.

28 6. If any responsive DOCUMENT or COMMUNICATION is no longer in existence,

1 cannot be located or is not in YOUR possession, custody, or control, then identify the
2 DOCUMENT or COMMUNICATION, describe its subject matter, and describe its disposition,
3 including, without limitation, identifying the PERSON having knowledge of the disposition.

4 7. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, these
5 Interrogatories are continuing in nature and YOU are to promptly supplement (i) if YOU learn
6 that the information YOU disclosed is incomplete or incorrect and if the additional or corrective
7 information has not otherwise been made known to Plaintiffs during the discovery process or
8 in writing, or (ii) if ordered by the Court.

9 8. The use of the singular form of any word includes the plural and use of the plural
10 form includes the singular form. Verb tenses shall be interpreted to include past, present, and
11 future tenses. The word “all” includes the word “any” and vice versa. The terms “and” and
12 “or” shall be construed either disjunctively or conjunctively as necessary to bring within the
13 scope of these requests any information that might otherwise be construed to be outside the
14 scope of these requests.

15 9. Each paragraph herein shall be construed independently and not by reference to
16 any other paragraph for the purpose of limitation.

17 **III. INTERROGATORIES.**

18 **INTERROGATORY NO. 1:**

19 List and describe each and every ADHS and/or BVR POLICY CONCERNING a CHANGE
20 or request to CHANGE the sex listed on a BIRTH RECORD.

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25 **INTERROGATORY NO. 2:**

26 List and IDENTIFY all PERSONS at ADHS and/or BVR who implement or enforce any
27 ADHS or BVR POLICY listed in Interrogatory No. 1, including but not limited to all employees,
28 custodians, and administrators at ADHS and/or BVR.

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INTERROGATORY NO. 3:

Describe and explain the process used by ADHS and/or BVR to consider, develop, draft, adopt, or otherwise create any ADHS and/or BVR POLICY listed in Interrogatory No. 1, or to consider develop, draft, adopt, or otherwise create any CHANGE to any such POLICY.

INTERROGATORY NO. 4:

List and IDENTIFY all PERSONS at ADHS and/or BVR who participate or have participated in the process described in YOUR response to Interrogatory No. 3, including but not limited to all employees, custodians, and administrators at ADHS and/or BVR.

INTERROGATORY NO. 5:

List and IDENTIFY all PERSONS who serve or have served on the BVR Registry Team, their titles, and their roles, including those responsible for receiving, reviewing, approving, or denying requests for CHANGES to the sex listed on a BIRTH RECORD.

1 **INTERROGATORY NO. 6:**

2 Describe and explain the process used by ADHS and/or BVR to implement or enforce
3 subsection (A)(3) of the Arizona Revised Statutes section 36-337, including but not limited to
4 how ADHS and/or BVR determine whether a physician’s written statement complies with that
5 subsection and how ADHS and/or BVR define, interpret, and/or apply the term “sex change
6 operation” or otherwise determine whether a physician’s written statement “verifies” a “sex
7 change operation” as those terms are used in that subsection.

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12 **INTERROGATORY NO. 7:**

13 Describe and explain the process used by ADHS to develop and then purportedly
14 reverse the opposition to requests by transgender individuals to CHANGE the sex listed on their
15 BIRTH RECORDS, including but not limited to the process that resulted in the “Arizona
16 Department of Health Services’ Objection to Order to Amend Applicant’s Registered Birth
17 Certificate” filed on February 15, 2017 in the Superior Court for Pima County.

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22 **INTERROGATORY NO. 8:**

23 List and IDENTIFY all PERSONS who are or were involved in the process described in
24 YOUR response to Interrogatory No. 7.

1 **INTERROGATORY NO. 9:**

2 Describe and explain YOUR purported governmental interest(s) or other justification(s)
3 under the Equal Protection Clause of the Fourteenth Amendment of the United States
4 Constitution for denying transgender individuals who have not undergone a “sex change
5 operation” the ability to CHANGE the sex listed on their BIRTH RECORDS under subsection
6 (A)(3) of Arizona Revised Statute section 36-337.

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11 **INTERROGATORY NO. 10:**

12 State all facts supporting YOUR response to Interrogatory No. 9.

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17 **INTERROGATORY NO. 11:**

18 Describe and explain YOUR purported governmental interest(s) or other justification(s)
19 under the Substantive Due Process Right to Privacy of the Fourteenth Amendment of the
20 United States Constitution for denying transgender individuals who have not undergone a “sex
21 change operation” the ability to CHANGE the sex listed on their BIRTH RECORDS under
22 subsection (A)(3) of Arizona Revised Statute section 36-337.

1 **INTERROGATORY NO. 12:**

2 State all facts supporting YOUR response to Interrogatory No. 11.
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7 **INTERROGATORY NO. 13:**

8 Describe and explain YOUR purported governmental interest(s) or other justification(s)
9 under the Substantive Due Process Right to Individual Liberty and Autonomy of the
10 Fourteenth Amendment of the United States Constitution for denying transgender individuals
11 who have not undergone a “sex change operation” the ability to CHANGE the sex listed on their
12 BIRTH RECORDS under subsection (A)(3) of Arizona Revised Statute section 36-337.
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17 **INTERROGATORY NO. 14:**

18 State all facts supporting YOUR response to Interrogatory No. 13.
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23 **INTERROGATORY NO. 15:**

24 Describe and explain YOUR purported governmental interest(s) or other justification(s)
25 under the Substantive Due Process Right to choose whether to undergo a particular medical
26 treatment of the Fourteenth Amendment of the United States Constitution for denying
27 transgender individuals who have not undergone a “sex change operation” the ability to
28 CHANGE the sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona Revised

1 Statute section 36-337.
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6 **INTERROGATORY NO. 16:**

7 State all facts supporting YOUR response to Interrogatory No. 15.
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12 **INTERROGATORY NO. 17:**

13 Describe and explain the process used by ADHS and/or BVR to keep information
14 CONCERNING a PERSON'S gender identity or transgender status private or confidential.
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21
22 Dated: October 15, 2021

Respectfully submitted,

OSBORN MALEDON, P.A.

/s/ Colin M. Proksel

Mary O'Grady (011434)

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this 15th day of October, 2021, to:

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Attorneys for Defendants

/s/ Colin M. Proksel

EXHIBIT 2

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

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

18 Plaintiffs,

19 v.

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

23 Defendant.

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

**PLAINTIFFS' FIRST SET OF
REQUESTS FOR PRODUCTION**

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1 **PROPOUNDING PARTY: HELEN ROE, JAMES POE, AND CARL VOE**

2 **RESPONDING PARTY: DON HERRINGTON**

3 **SET NUMBER: ONE**

4 Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs Helen Roe, James
5 Poe, and Carl Voe (“Plaintiffs”) hereby demand Defendant Don Herrington (“Defendant”)
6 produce copies of or make available for inspection and photocopying the documents and things
7 requested below in accordance with the following Definitions and Instructions below. The
8 requested documents and things must be produced within thirty (30) days after service hereof
9 at the offices of Plaintiffs’ counsel, Osborn Maledon, PA, at 2929 North Central Avenue, 21st
10 Floor, Phoenix, Arizona 85012-2793.

11 **I. DEFINITIONS.**

12 Words in CAPITALS are defined as follows:

13 1. ACTION means the above-captioned litigation instituted by Plaintiffs on
14 November 4, 2020.

15 2. ARIZONA DEPARTMENT OF HEALTH SERVICES (“ADHS”) means the state
16 agency of Arizona responsible for providing health services to Arizona’s population, including
17 creating and maintaining a system of vital records, and includes each of its branches, divisions,
18 or committees and each of its officers, employees, affiliates, attorneys, accountants,
19 consultants, representatives, and agents.

20 3. BIRTH RECORD means a DOCUMENT or other information created or maintained
21 by YOU CONCERNING a person’s birth, including but not limited to a written registered birth
22 certificate or related information in an electronic database.

23 4. BUREAU OF VITAL RECORDS (“BVR”) means the division of ADHS responsible
24 for maintaining and issuing certified copies of vital records, and includes each of its officers,
25 employees, affiliates, attorneys, accountants, consultants, representatives, and agents.

26 5. CHANGE means any amendment, addition, alteration, deletion, correction,
27 modification, or substitution.

1 **6.** COMMUNICATION is used in its broadest sense and means any transmission of
2 information from one PERSON to another by any means in the form of facts, ideas, inquiries,
3 or otherwise.

4 **7.** COMPLAINT refers to the Amended Complaint, (Doc. 47), filed by Plaintiffs in
5 this ACTION on January 8, 2020.

6 **8.** CONCERNING is used in its broadest sense to require information, things,
7 COMMUNICATIONS, or DOCUMENTS that reflect, relate to, identify, constitute, embody,
8 describe, discuss, summarize, evidence, reference, comment on, or concern in any way the
9 subject matter of the request.

10 **9.** DOCUMENT is used in its broadest sense and means any written, printed, typed,
11 recorded, magnetic, punched, copied, graphic, or other tangible thing in, upon, or from which
12 information may be embodied, translated, conveyed, or stored (including, but not limited to,
13 correspondence, memoranda, notes, records, books, written policies, papers, PowerPoints,
14 telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs,
15 computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs,
16 charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule
17 of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence
18 1001, whether or not labeled “confidential.” A draft or non-identical copy is a separate
19 DOCUMENT within the meaning of this term.

20 **10.** PERSON means any natural person or any business, legal, or governmental entity
21 or association or any other cognizable entity, including, without limitation, corporations,
22 proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations,
23 governmental agencies or instrumentalities, societies and orders.

24 **11.** POLICY is used in its broadest sense and means any past, present, or
25 contemplated future policy, procedure, rule, protocol, guideline, regulation, practice, or other
26 principle or course of action, whether or not in writing.

27 **12.** YOU, YOUR, or YOURS mean Don Herrington in his official capacity as Interim
28

1 State Registrar of Vital Records and Director of ADHS, and includes each of the officers,
2 directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants,
3 consultants, representatives, and agents that report to him in his official capacity. It also means
4 any PERSON who previously exercised or later exercises any of Mr. Herrington's official
5 positions or responsibilities in whole or in part, whether temporarily or permanently.

6 **II. INSTRUCTIONS.**

7 1. If a document request is silent as to the time period for which information is
8 sought, YOU should produce material dated from January 1, 2004 to the present.

9 2. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, YOU are to produce
10 all information within the scope of the definitions set forth herein that is within YOUR
11 possession, custody, or control, as well as all information within the possession, custody, or
12 control of anyone acting on YOUR behalf including, but not limited to, YOUR agents,
13 representatives, employees, officers, directors, and attorneys.

14 3. YOU shall produce information and electronically stored information ("ESI")
15 pursuant to any order concerning ESI filed in this ACTION.

16 4. These document requests embrace originals, identical copies if originals are
17 unavailable, and non-identical copies (whether different from the originals because of notes
18 made on such copies or otherwise) of the information described in these document requests.

19 5. Each document request shall be complied with fully unless it is objected to in
20 good faith, in which event the reasons for YOUR objection shall be stated in detail in writing.
21 If an objection pertains to only a portion of the document request, or a word, phrase, or clause
22 contained within it, YOU are required to state YOUR objection to that portion and to comply
23 with the remainder of the request, using YOUR best efforts to do so.

24 6. Pursuant to Federal Rule of Civil Procedure 34, information produced in
25 response to these document requests shall be produced as it is kept in the usual course of
26 business or shall be organized and labeled to correspond with the categories in the demand.
27 DOCUMENTS or COMMUNICATIONS attached to each other consisting of multiple pages must
28

1 not be separated.

2 7. Information is to be produced in its full and unredacted form; redacted
3 information shall not constitute compliance with these document requests unless such
4 information is redacted pursuant to a claim of privilege and accompanied by a privilege log,
5 as set forth below.

6 8. If YOU or YOUR counsel assert that any information responsive to any document
7 request is privileged or otherwise protected from discovery, YOU are to comply with the
8 requirements of Federal Rule of Civil Procedure 26(b)(5), the operative Protective Order, and
9 any order concerning ESI filed in this ACTION as to each DOCUMENT, COMMUNICATION, thing,
10 or piece of information for which a claim of privilege or protection from discovery is made.
11 For any DOCUMENT, COMMUNICATION, or other information withheld on the grounds that it is
12 privileged or otherwise claimed to be excludable from discovery, identify the information,
13 describe its subject matter and date, identify all authors and all recipients (including copied
14 and blind copied recipients), and specify the basis for the claimed privilege or other grounds
15 of exclusion.

16 9. If any responsive DOCUMENT or COMMUNICATION is no longer in existence,
17 cannot be located or is not in YOUR possession, custody, or control, then identify the
18 DOCUMENT or COMMUNICATION, describe its subject matter, and describe its disposition,
19 including, without limitation, identifying the PERSON having knowledge of the disposition. If
20 any responsive DOCUMENT or COMMUNICATION was previously stored electronically or is of
21 the type that is typically stored electronically in the usual course of business, but is no longer
22 stored for any reason, provide an explanation of ADHS's retention policy and the reason that
23 the DOCUMENT or COMMUNICATION is no longer stored or otherwise in existence.

24 10. If production of any requested information is objected to on the grounds that
25 production is unduly burdensome or the information is not reasonably accessible as defined in
26 Rule 26(b)(2) of the Federal Rules of Civil Procedure, describe in detail in writing the burden
27 or expense of producing the requested information, including but not limited to identification
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1 of the steps that would be necessary to retrieve and produce the information and a dollar
2 estimate of the cost of performing those steps.

3 **11.** Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, these document
4 requests are continuing in nature and YOU are to promptly supplement (i) if YOU learn that the
5 information YOU disclosed is incomplete or incorrect and if the additional or corrective
6 information has not otherwise been made known to Plaintiffs during the discovery process or
7 in writing, or (ii) if ordered by the Court.

8 **12.** The use of the singular form of any word includes the plural and use of the plural
9 form includes the singular form. Verb tenses shall be interpreted to include past, present, and
10 future tenses. The word “all” includes the word “any” and vice versa. The terms “and” and
11 “or” shall be construed either disjunctively or conjunctively as necessary to bring within the
12 scope of these requests any information that might otherwise be construed to be outside the
13 scope of these requests.

14 **13.** Each paragraph herein shall be construed independently and not by reference to
15 any other paragraph for the purpose of limitation.

16 **III. DOCUMENTS AND THINGS TO BE PRODUCED.**

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

18 All DOCUMENTS and COMMUNICATIONS RELATING TO any BIRTH RECORD for any of
19 the Plaintiffs in this ACTION.

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

21 All DOCUMENTS and COMMUNICATIONS CONCERNING any ADHS and/or BVR POLICY
22 CONCERNING a CHANGE or request to CHANGE the sex listed on a BIRTH RECORD.

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

24 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR implementation or
25 enforcement of subsections (A)(3) or (A)(4) of Arizona Revised Statutes section 36-337.

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

27 All DOCUMENTS and COMMUNICATIONS considered or relied upon by YOU when
28

1 considering, developing, drafting, adopting, or otherwise creating subsections (O) or (P) of
2 Arizona Administrative Code section R9-19-208, or when considering, developing, drafting,
3 adopting, or otherwise creating any CHANGES to those subsections.

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

5 All DOCUMENTS and COMMUNICATIONS CONCERNING the term “sex change operation”
6 as used in subsection (A)(3) of Arizona Revised Statutes section 36-337.

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

8 All DOCUMENTS and COMMUNICATIONS CONCERNING any POLICY of ADHS and/or
9 BVR CONCERNING how those entities define, interpret, implement, apply, or otherwise
10 consider any words, phrases, or terms that are not defined by statute or other applicable law.

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

12 All DOCUMENTS and COMMUNICATIONS sent by, to, or within ADHS and/or BVR
13 CONCERNING Arizona House Bill 2081, 54th Legislature, Second Regular Session (2020).

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

15 All DOCUMENTS and COMMUNICATIONS CONCERNING any opposition by ADHS to
16 requests by transgender individuals to CHANGE the sex listed on their BIRTH RECORDS,
17 including but not limited to the “Arizona Department of Health Services’ Objection to Order
18 to Amend Applicant’s Registered Birth Certificate” filed on February 15, 2017 in the Superior
19 Court for Pima County, Arizona.

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

21 All DOCUMENTS and COMMUNICATIONS CONCERNING the purported reversal of any
22 opposition by ADHS to requests by transgender individuals to CHANGE the sex listed on their
23 BIRTH RECORDS as referenced in Request No. 8 above.

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

25 All DOCUMENTS and COMMUNICATIONS CONCERNING the responsibilities and
26 authorities of the BVR Registry Team, its role in granting or denying applications to CHANGE
27 the sex listed on individuals’ BIRTH RECORDS, its origins and history, its organizational
28

1 structure, and the identity and title of its members past and present.

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

3 All COMMUNICATIONS sent by or to YOU, Thomas Salow, Krystal Colburn, Nicole
4 Heath, Toni Miller, Alex Quintana, Heidi Lengdorfer, Kelly Baker, Luana Pallanes, Robin
5 Rodriguez, Richard McKenney, Marcellina Lopez, Julia Mora, Bianco Soto, John Jimenez,
6 Hannah Garcia, Luis Valdez-Ramos, or Holly Baker CONCERNING the interpretation,
7 application, and enforceability of any statute, law, or POLICY CONCERNING a CHANGE or
8 request to CHANGE the sex listed on a BIRTH RECORD.

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

10 All DOCUMENTS and COMMUNICATIONS CONCERNING any POLICY of ADHS or BVR
11 to accept federal court orders as the basis to CHANGE any part of a BIRTH RECORD, including
12 but not limited to Section B.4 of the ADHS document dated May 18, 2020 with the title “Court
13 Orders and Subpoenas.”

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

15 DOCUMENTS sufficient to show the number of annual requests for a CHANGE to the sex
16 listed on a BIRTH RECORD, the basis of such requests, the number of approvals of such requests,
17 the number of denials of such requests, and the reasons for such denials.

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

19 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported governmental
20 interest(s) or other justification(s) under the Equal Protection Clause of the Fourteenth
21 Amendment of the United States Constitution for denying transgender individuals who have
22 not undergone a “sex change operation” the ability to CHANGE the sex listed on their BIRTH
23 RECORDS under subsection (A)(3) of Arizona Revised Statute section 36-337.

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

25 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported governmental
26 interest(s) or other justification(s) under the Substantive Due Process Right to Privacy of the
27 Fourteenth Amendment of the United States Constitution for denying transgender individuals
28

1 who have not undergone a “sex change operation” the ability to CHANGE the sex listed on their
2 BIRTH RECORDS under subsection (A)(3) of Arizona Revised Statute section 36-337.

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

4 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported governmental
5 interest(s) or other justification(s) under the Substantive Due Process Right to Individual
6 Liberty and Autonomy of the Fourteenth Amendment of the United States Constitution for
7 denying transgender individuals who have not undergone a “sex change operation” the ability
8 to CHANGE the sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona Revised
9 Statute section 36-337.

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

11 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported governmental
12 interest(s) or other justification(s) under the Substantive Due Process Right to choose whether
13 to undergo a particular medical treatment of the Fourteenth Amendment of the United States
14 Constitution for denying transgender individuals who have not undergone a “sex change
15 operation” the ability to CHANGE the sex listed on their BIRTH RECORDS under subsection
16 (A)(3) of Arizona Revised Statute section 36-337.

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

18 All DOCUMENTS and COMMUNICATIONS CONCERNING any ADHS and/or BVR POLICY
19 CONCERNING privacy or confidentiality protections for information CONCERNING a PERSON’S
20 gender identity or transgender status.

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

22 All DOCUMENTS and COMMUNICATIONS reviewed, considered or relied upon by any
23 expert witness retained by Defendant who provided or will provide an opinion on Defendant’s
24 behalf in connection with this ACTION.

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

2 All DOCUMENTS and COMMUNICATIONS CONCERNING compensation for any expert
3 witness retained by Defendant who provided or will provide an opinion on Defendant's behalf
4 in connection with this ACTION.

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

6 All DOCUMENTS and COMMUNICATIONS CONCERNING facts and assumptions that
7 Defendants' attorneys provided to any expert witness retained now or in the future by
8 Defendant and which that expert relied on in forming the expert's opinions.

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

10 All DOCUMENTS and COMMUNICATIONS used to prepare or educate a witness providing
11 a declaration, testimony, or opinion on Defendant's behalf in connection with this ACTION.

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

13 All DOCUMENTS and COMMUNICATIONS that Defendant referenced, relied upon, or
14 identified in Defendant's Fed. R. Civ. P. Rule 26(a) initial disclosures.

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

16 All DOCUMENTS and COMMUNICATIONS CONCERNING that Defendant relied upon,
17 referenced in, or identified in answering Plaintiffs' interrogatories.

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

19 All non-privileged DOCUMENTS and COMMUNICATIONS CONCERNING the ACTION.
20

21
22 Respectfully submitted,

23 Dated: October 15, 2021

OSBORN MALEDON, P.A.

24 /s/ Colin M. Proksel
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THE FOREGOING was e-mailed
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EXHIBIT 3

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13 *Attorneys for Defendant*

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

17 Helen Roe, a minor, by and through her parent
 and next friend Megan Roe, et al.,

18 Plaintiffs,

19 v.

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

23 Defendant.

NO. 4:20-cv-00484-JAS

**DEFENDANT’S FIRST
 SUPPLEMENTAL RESPONSES TO
 PLAINTIFFS’ FIRST SET OF
 INTERROGATORIES**

24 Pursuant to Federal Rule of Civil Procedure 33, Defendant Don Herrington
 25 (“Defendant”), through counsel, hereby responds to Plaintiffs’ First Set of Interrogatories
 26 as follows. Defendant reserves the right to supplement these responses as necessary and
 27 as discovery continues. *Supplemental information is in bold italics.*

28

**DEFENDANT'S OBJECTIONS TO
PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS**

1
2
3 Defendant objects to Plaintiffs' definition of "BIRTH RECORD." "BIRTH
4 RECORD" is not defined within the applicable Arizona Revised Statute sections,
5 specifically A.R.S. § 36-301, and confuses applicable and existing terminology contained
6 in A.A.C. §§ R9-19-101 and R9-19-201. Plaintiffs' definition of "BIRTH RECORD" is
7 vague, ambiguous, confusing, irrelevant, and overbroad because it is virtually unlimited in
8 time and scope and encompasses documentation and/or information that is not relevant to
9 the claims in Plaintiffs' Amended Complaint. Moreover, "BIRTH RECORD," as defined
10 by Plaintiffs, potentially includes information that is confidential and protected from
11 disclosure and/or sealed pursuant to A.R.S. § 36-322 (requiring the state registrar to seal a
12 birth certificate and any evidentiary documents when a registered birth certificate is
13 amended, and that any sealed record shall be accessible only via a state-issued court order
14 (*see* definition of "court order" in A.R.S. § 36-301(7)); A.R.S. § 36-324(A) (prohibiting
15 the issuance of any medical information related to birth registration); and, A.R.S. § 36-
16 342 (prohibiting the inspection or disclosure of a vital record, evidentiary documentation
17 supporting a vital record, or information contained in a vital record.) In addition, it is
18 unclear what Plaintiffs mean by "or related information in an electronic database." To the
19 extent this definition includes Electronically Stored Information ("ESI"), the parties ***are***
20 ***attempting*** to reach an agreement on an ESI search protocol, including appropriate search
21 terms and queries, file type and date restrictions, data sources, and custodians, ***but have***
22 ***not yet done so.***

23 Defendant also objects to Plaintiffs' definitions of "BIRTH RECORD" and
24 "CHANGE" to the extent they encompass "correction(s)" made to a registered birth
25 certificate. A birth certificate registered in the State of Arizona can only be amended
26 and/or corrected pursuant to A.R.S. § 36-323. The Arizona Legislature has defined
27 "correction" as "a change made to a registered birth certificate because of a typographical
28 error, including misspelling and missing or transposed letters or numbers." A.R.S. § 36-

1 301(6). It has defined “amend” as “a change, other than a correction, to a registered
2 certificate by adding, deleting or substituting information on that certificate.” A.R.S. §
3 36-301(2). Plaintiffs have not asserted any claims or allegations regarding corrections to
4 registered birth certificates. Accordingly, Defendant objects to these definitions to the
5 extent they include information regarding corrections as defined by A.R.S. § 36-301(6) as
6 vague, confusing, irrelevant, overbroad, unduly burdensome, and not proportional to the
7 needs of this case. Defendant will interpret “CHANGE” to mean “amend” as defined by
8 A.R.S. § 36-301(2).

9 Finally, Defendant objects to the time period contained in Instruction No. 1 of
10 Plaintiffs’ Instructions section. Plaintiffs’ Amended Complaint is devoid of allegations
11 regarding conduct and/or events that occurred before approximately 2019 and none of the
12 named minor Plaintiffs were born before 2011 and could not have had an Arizona birth
13 certificate before then. Information from January 1, 2004 to the present—a period of
14 almost 18 years—is not relevant to the claims or defenses in this lawsuit, and is
15 overbroad, irrelevant, unduly burdensome, and not proportional to the needs of this case.
16 The Arizona Department of Health Services (“ADHS”) also has a document retention
17 policy in place that allows for the destruction of certain documents after a period of three
18 years. Some or all the documents requested by Plaintiffs dating back to 2004 may have
19 been destroyed pursuant to this document retention policy.

20 **INTERROGATORY NO. 1:**

21 List and describe each and every ADHS and/or BVR POLICY CONCERNING a
22 CHANGE or request to CHANGE the sex listed on a BIRTH RECORD.

23 **RESPONSE:**

24 Objection: Vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
25 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
26 and scope and encompasses documentation and/or information that is not relevant to the
27 claims or defenses in this lawsuit and is therefore unduly burdensome and not
28 proportional to the needs of this case. Defendant also objects to this interrogatory as

1 overbroad, unduly burdensome, and irrelevant because it seeks “each and every” ADHS
2 and/or BVR policy concerning a “CHANGE” or request to “CHANGE” the sex listed on a
3 birth record from January 1, 2004 to present, which encompasses information that is not
4 relevant to the claims or defenses in this lawsuit or proportional to the needs of this case
5 given that Plaintiffs’ Amended Complaint is devoid of allegations regarding conduct
6 and/or events that occurred before approximately 2019 and none of the named minor
7 Plaintiffs were born before 2011. Defendant also objects to this interrogatory to the extent
8 it seeks any and all policies concerning a “CHANGE” or request to “CHANGE” as
9 Plaintiffs’ definition of “CHANGE” is vague, confusing, irrelevant, overbroad, unduly
10 burdensome, and not proportional to the needs of the case in that it includes information
11 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
12 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
13 in this case. Defendant will interpret “CHANGE” to mean “amend” as defined by A.R.S.
14 § 36-301(2).

15 Without waiving these objections, the following iterations of BVR Policy No. 014,
16 Amendments to Birth Records, concern amendments to registered birth certificates:

- 17 • Amendments to Birth Records, BVR Policy No. 014, Dated October 18,
18 2016. [ADHS000103 – ADHS000121]
- 19 • Amendments to Birth Records, BVR Policy No. 014, Dated January 23,
20 2017. [ADHS000122 – ADHS000140]
- 21 • Amendments to Birth Records, BVR Policy No. 014, Dated October 1,
22 2018. [ADHS000141 – ADHS000159]
- 23 • Amendments to Birth Records, BVR Policy No. 014, Dated March 28,
24 2019. [ADHS000160 – ADHS000178]
- 25 • Amendments to Birth Records, BVR Policy No. 014, Dated August 7, 2020.
26 [ADHS000007 – ADHS000023]

27 BVR Policy No. 014 is meant to provide guidance to hospitals, health care
28 providers, county vital records offices, registrants, a registrants’ legal guardian/parent, and

1 BVR staff/employees for amending birth certificates. *See also* Bureau of Vital Records
2 Desk Procedure for Corrections and Amendments. [ADHS000287 – ADHS000293]. In
3 addition, A.A.C. § R9-19-208 governs the process for amending information in a
4 registered birth certificate in the State of Arizona. A prior version of this regulation was
5 adopted in 2007 and amended in 2009 and most recently in 2016.

6 **INTERROGATORY NO. 2:**

7 List and IDENTIFY all PERSONS at ADHS and/or BVR who implement or
8 enforce any ADHS or BVR POLICY listed in Interrogatory No. 1, including but not
9 limited to all employees, custodians, and administrators at ADHS and/or BVR.

10 **RESPONSE:**

11 Objection: Vague and ambiguous as to “implement,” “enforce,” “custodians,” and
12 “administrators.” Defendant objects to this interrogatory as overbroad, unduly
13 burdensome, and irrelevant, as the terms “implement” and “enforce” are not defined or
14 reasonably limited in scope and because Plaintiffs seek information spanning from
15 January 1, 2004 to the present, which would require Defendant to obtain and provide the
16 names of several hundred former employees who may have implemented or enforced “any
17 ADHS or BVR POLICY CONCERNING a CHANGE or request to CHANGE the sex
18 listed on a BIRTH RECORD,” and is therefore not proportional to the needs of this case.
19 Defendant further objects to this interrogatory as overbroad, unduly burdensome, and
20 irrelevant as to time period and scope because Plaintiffs’ Amended Complaint is devoid of
21 allegations pertaining to conduct and/or events that occurred before approximately 2019
22 and none of the named minor Plaintiffs were born before 2011.

23 Without waiving these objections, in response to Interrogatory No. 2, the following
24 current ADHS/BVR employees are involved in implementing and/or enforcing policies
25 concerning amendments to the sex listed on a registered birth certificate:

- 26 • Don Herrington, Interim Director of ADHS and Interim State Registrar of
27 the BVR
28 c/o Patricia C. LaMagna
Office of the Attorney General

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2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854

- Colby Bower, *former* Assistant Director of Licensing Services and Assistant Director for Policy and Intergovernmental Affairs, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Thomas Salow, *former* Deputy Assistant Director of Licensing and Branch Chief, *Interim Assistant Director of Licensing Services*, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Krystal Colburn, Bureau Chief and Assistant State Registrar, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Nicole Heath, Deputy Chief and Fraud Manager, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Bianca Soto, Educator and Quality Assurance Manager, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Toni Miller, Policy Manager and Community Partner Liaison, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004

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(602) 542-8854

- Robert Lane, Chief Administrative Counsel, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Katina Lugo, Registry Operations Manager, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Ruthann Smejkal, Senior Rules Analyst, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854

Defendant will supplement his response to this interrogatory if it is determined that additional individuals are involved in implementing and/or enforcing policies concerning amendments to the sex listed on a registered birth certificate.

INTERROGATORY NO. 3:

Describe and explain the process used by ADHS and/or BVR to consider, develop, draft, adopt, or otherwise create any ADHS and/or BVR POLICY listed in Interrogatory No. 1, or to consider develop, draft, adopt, or otherwise create any CHANGE to any such POLICY.

RESPONSE:

Objection: Vague and ambiguous as to “process used” and “consider,” “develop,” “draft,” “adopt,” and “otherwise create.” Defendant objects to this interrogatory as overbroad, unduly burdensome, and irrelevant as to the time period between January 1, 2004 and the present because Plaintiffs’ Amended Complaint is devoid of allegations

1 regarding conduct and/or events that occurred before approximately 2019 and none of the
2 named minor Plaintiffs were born before 2011, and therefore this interrogatory seeks
3 information that is irrelevant and not proportional to the needs of this case. Defendant
4 also objects to relevance, as the ADHS/BVR “process” (if any) in considering,
5 developing, drafting, adopting, or creating any ADHS and/or BVR policy or a change to
6 any policy is not at issue in this case and is not proportional to the needs of this case.
7 Defendant further objects to the extent the information requested contains information
8 protected by the attorney-client privilege, deliberative process privilege, and/or work-
9 product doctrine.

10 Without waiving these objections, ADHS is required by Arizona law to follow
11 applicable statutes and implement those statutes through the development and adoption of
12 regulations, also referred to as administrative rules, listed in response to Interrogatory No.
13 1. To that end, ADHS is required to “[a]dopt rules to implement a statewide system of
14 vital records pursuant to this chapter using the recommendations of the federal agency
15 responsible for national vital statistics as guidelines subject to modification by the state
16 registrar” and “[p]rovide a means for the public to request a copy of a vital record and
17 grant or deny the request according to criteria prescribed by rules adopted pursuant to this
18 chapter. These rules shall include eligibility criteria, proof of identity requirements and
19 payment requirements to obtain the requested vital record.” A.R.S. § 36-302(B)(1), (9).
20 All administrative rules are promulgated according to A.R.S. Title 41, Chapter 6, Article 3
21 which governs what ADHS must consider in drafting and editing administrative rules, and
22 the process by which administrative rules are reviewed before they become final, unless
23 the Legislature, through legislation, has exempted ADHS from the rulemaking process as
24 stated in A.R.S. Title 41, Chapter 6, Article 3. Informational summaries of the different
25 types of rulemaking processes are available at
26 [https://www.azdhs.gov/director/administrative-counsel-rules/rules/index.php#rulemaking-](https://www.azdhs.gov/director/administrative-counsel-rules/rules/index.php#rulemaking-process-home)
27 [process-home](https://www.azdhs.gov/director/administrative-counsel-rules/rules/index.php#rulemaking-process-home) (last accessed December 6, 2021). All laws, including but not limited to
28 statutes, rules, case law, and substantive policy statements, supersede any statement on the

1 website.

2 When interpreting implementing statutes to draft rules, ADHS follows general
3 rules of statutory construction, including but not limited to those that are stated in A.R.S.
4 Title 1, Chapter 2, Article 2. BVR Policy No. 014 listed in response to Interrogatory No.
5 1 is based predominantly on statute and rule. In drafting this policy and its various
6 amendments, BVR considered factors such as the delegation of duties to the county vital
7 records offices, changes in technology and implementation of new electronic systems to
8 organize the vital records system, changes in legislation, changes in administrative rules,
9 legal decisions and legal advice, community input, and customer needs.

10 **INTERROGATORY NO. 4:**

11 List and IDENTIFY all PERSONS at ADHS and/or BVR who participate or have
12 participated in the process described in YOUR response to Interrogatory No. 3, including
13 but not limited to all employees, custodians, and administrators at ADHS and/or BVR.

14 **RESPONSE:**

15 Objection: Vague and ambiguous as to “participate(d),” “process,” “custodians,”
16 and “administrators.” Defendant objects to this interrogatory as overbroad, unduly
17 burdensome, and irrelevant as to the time period between January 1, 2004 and the present
18 because Plaintiffs’ Amended Complaint is devoid of allegations pertaining to conduct
19 and/or events that occurred before approximately 2019 and none of the named minor
20 Plaintiffs were born before 2011, and therefore this interrogatory seeks information that is
21 not proportional to the needs of this case. Defendant further objects that this interrogatory
22 is overbroad, unduly burdensome, and irrelevant, as it would require Defendant to find
23 and provide the names of several hundred former employees who participated in “the
24 process used by ADHS and/or BVR to consider, develop, draft, adopt, or otherwise create
25 any ADHS and/or BVR POLICY listed in Interrogatory No. 1, or to consider develop,
26 draft, adopt, or otherwise create any CHANGE to any such POLICY,” which is not
27 proportional to the needs of this case. Defendant also objects to relevance, as the
28 ADHS/BVR “process” (if any) in considering, developing, drafting, adopting, or creating

1 any ADHS and/or BVR policy or a change to any policy is not at issue and is not
2 proportional to the needs of this case.

3 Without waiving these objections, the following persons participate or have
4 participated in developing, drafting, adopting, and/or creating the policies listed in
5 response to Interrogatory No. 1:

- 6 • Don Herrington, Interim Director of ADHS and Interim State Registrar of
7 the BVR
8 c/o Patricia C. LaMagna
9 Office of the Attorney General
10 2005 N. Central Avenue
11 Phoenix, Arizona 85004
12 (602) 542-8854
- 13 • Colby Bower, *former* Assistant Director of Licensing Services and Assistant
14 Director for Policy and Intergovernmental Affairs, ADHS
15 c/o Patricia C. LaMagna
16 Office of the Attorney General
17 2005 N. Central Avenue
18 Phoenix, Arizona 85004
19 (602) 542-8854
- 20 • Thomas Salow, *former* Deputy Assistant Director of Licensing and Branch
21 Chief, *Interim Assistant Director of Licensing Services*, ADHS
22 c/o Patricia C. LaMagna
23 Office of the Attorney General
24 2005 N. Central Avenue
25 Phoenix, Arizona 85004
26 (602) 542-8854
- 27 • Krystal Colburn, Bureau Chief and Assistant State Registrar, ADHS
28 c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Robin Rodriguez, former Operations Chief and Fraud Manager, BVR,
ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854

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- Nicole Heath, Deputy Chief and Fraud Manager, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Bianca Soto, Educator and Quality Assurance Manager, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Toni Miller, Policy Manager and Community Partner Liaison, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Robert Lane, Chief Administrative Counsel, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Marcellina Lopez, former Operations Manager, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Luis Valdez-Ramos, former Operations Manager, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Julia Mora, former Customer Services Supervisor, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue

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Phoenix, Arizona 85004
(602) 542-8854

- Ana Romero, former Customer Services Representative, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Dulce Soto, former Customer Services Representative, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Katina Lugo, Registry Operations Manager, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Ruthann Smejkal, Senior Rules Analyst, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Will Humble, former Director of ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Cara Christ, former Director of ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Cory Nelson, former Interim Director of ADHS

1 Defendant is unaware of Mr. Nelson's current contact information.

- 2 • Patricia Adams, former Assistant State Registrar, ADHS

3 Defendant is unaware of Ms. Adams' current contact information.

- 4 • Valerie Grina, former Rules Analyst, ADHS

5 Defendant is unaware of Ms. Grina's current contact information.

- 6 • Khaleel Hussaini, former Bureau Chief/Assistant State Registrar, BVR,
7 ADHS

8 Defendant is unaware of Mr. Hussaini's current contact information.

- 9 • Jeffrey Bloomberg, former Administrative Counsel, ADHS

10 Defendant is unaware of Mr. Bloomberg's current contact information.

- 11 • Kathleen Phillips, former Administrative Counsel, ADHS

12 Defendant is unaware of Ms. Phillips' current contact information.

- 13 • Donald Schmid, former Administrative Counsel, ADHS

14 c/o Patricia C. LaMagna
15 Office of the Attorney General
16 2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854

17 **INTERROGATORY NO. 5:**

18 List and IDENTIFY all PERSONS who serve or have served on the BVR Registry
19 Team, their titles, and their roles, including those responsible for receiving, reviewing,
20 approving, or denying requests for CHANGES to the sex listed on a BIRTH RECORD.

21 **RESPONSE:**

22 Objection: vague and ambiguous as to "serve," "have served," "roles," and
23 "responsible." Vague, ambiguous, confusing, irrelevant, and overbroad as to "BIRTH
24 RECORD," as Plaintiffs' definition of "BIRTH RECORD" is virtually unlimited in time
25 and scope and encompasses documentation and/or information that is not relevant to the
26 claims or defenses in this lawsuit and is therefore unduly burdensome and not
27 proportional to the needs of this case. Defendant also objects to this interrogatory to the
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1 extent it requests information pertaining to “CHANGES” to the sex listed on a “BIRTH
2 RECORD,” as Plaintiffs’ definition of “CHANGE” is vague, confusing, irrelevant,
3 overbroad, unduly burdensome, and not proportional to the needs of the case in that it
4 includes information related to “corrections” to registered birth certificates defined in
5 A.R.S. § 36-301(6), which are not “amendments” governed by A.R.S. § 36-337 and are
6 therefore not at issue in this case. Defendant further objects to this interrogatory as
7 overbroad, unduly burdensome, and irrelevant as to the time period between January 1,
8 2004 and the present because Plaintiffs’ Amended Complaint is devoid of allegations
9 pertaining to conduct and/or events that occurred before approximately 2019 and none of
10 the named minor Plaintiffs were born before 2011, and therefore this interrogatory seeks
11 information that is not proportional to the needs of this case. Defendant further objects to
12 this interrogatory as overbroad, unduly burdensome, and not proportional to the needs of
13 this case because the “BVR Registry Team” includes all management, supervisors, and
14 customer service representatives who play any part in any aspect of the registration of
15 birth for BVR. As such, this interrogatory would require the Defendant to find and
16 provide the names, titles, and roles of several hundred current and former employees who
17 were part of the “BVR Registry Team,” which amounts to a request to name and identify
18 almost every BVR employee from January 1, 2004 to the present, as most BVR
19 employees are/were part of the BVR Registry Team at some point.

20 Without waiving these objections, Krystal Colburn, Nicole Heath, Robin
21 Rodriguez, Bianca Soto, Toni Miller, Marcellina Lopez, Luis Valdez-Ramos, Julia Mora,
22 Ana Romero, Dulce Soto, and Katina Lugo are part of, or have previously been part of,
23 the BVR Registry Team. Additionally, the following persons are currently employed by
24 BVR/ADHS and are part of the BVR Registry Team:

- 25 • Jessica Neely, Program and Project Specialist, BVR, ADHS
26 c/o Patricia C. LaMagna
27 Office of the Attorney General
28 2005 N. Central Avenue
Phoenix, Arizona 85004

- 1 (602) 542-8854
- 2 • Ann Ramirez, Program Manager, BVR, ADHS
- 3 c/o Patricia C. LaMagna
- 4 Office of the Attorney General
- 5 2005 N. Central Avenue
- 6 Phoenix, Arizona 85004
- 7 (602) 542-8854
- 8 • Jacqueline Hartman, Customer Service Representative, BVR, ADHS
- 9 c/o Patricia C. LaMagna
- 10 Office of the Attorney General
- 11 2005 N. Central Avenue
- 12 Phoenix, Arizona 85004
- 13 (602) 542-8854
- 14 • Alan Santa Cruz, Customer Service Representative, BVR, ADHS
- 15 c/o Patricia C. LaMagna
- 16 Office of the Attorney General
- 17 2005 N. Central Avenue
- 18 Phoenix, Arizona 85004
- 19 (602) 542-8854
- 20 • Chloe Jacobs, Customer Service Representative, BVR, ADHS
- 21 c/o Patricia C. LaMagna
- 22 Office of the Attorney General
- 23 2005 N. Central Avenue
- 24 Phoenix, Arizona 85004
- 25 (602) 542-8854
- 26 • Alan Paul, Program and Project Specialist Supervisor, BVR, ADHS
- 27 c/o Patricia C. LaMagna
- 28 Office of the Attorney General
- 2005 N. Central Avenue
- Phoenix, Arizona 85004
- (602) 542-8854
- Maria Loreto, Customer Service Representative, BVR, ADHS
- c/o Patricia C. LaMagna
- Office of the Attorney General
- 2005 N. Central Avenue
- Phoenix, Arizona 85004
- (602) 542-8854
- Angela Brunbaugh, Customer Service Representative, BVR, ADHS
- c/o Patricia C. LaMagna
- Office of the Attorney General
- 2005 N. Central Avenue
- Phoenix, Arizona 85004
- (602) 542-8854

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2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854

- Jenny Hernandez, Customer Service Representative, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Ashley Ramos, Customer Service Representative, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Jenissa Lucio, Program Manager, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Cinthia Beltran, Customer Service Representative, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Cecilia Vargas
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
(602) 542-8854
- Michael Tachera, Customer Service Representative, BVR, ADHS
c/o Patricia C. LaMagna
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
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1 Krystal Colburn, as Bureau Chief and Assistant State Registrar, ultimately
2 approves all amendments to the sex field on registered birth certificates. The Customer
3 Service Representatives and Program and Project Specialist Supervisors all have various
4 administrative functions in the registration of birth, customer service interactions, and
5 preparing documents for management review and approval; however, none of these
6 employees approve or deny requests for amendments to the sex on a birth certificate.

7 **INTERROGATORY NO. 6:**

8 Describe and explain the process used by ADHS and/or BVR to implement or
9 enforce subsection (A)(3) of the Arizona Revised Statutes section 36-337, including but
10 not limited to how ADHS and/or BVR determine whether a physician's written statement
11 complies with that subsection and how ADHS and/or BVR define, interpret, and/or apply
12 the term "sex change operation" or otherwise determine whether a physician's written
13 statement "verifies" a "sex change operation" as those terms are used in that subsection.

14 **RESPONSE:**

15 Objection: Compound. Defendant objects to this entire interrogatory as vague,
16 ambiguous, and confusing. Defendant further objects to this interrogatory as overbroad,
17 unduly burdensome, and irrelevant as to the time period between January 1, 2004 and the
18 present because Plaintiffs' Amended Complaint is devoid of allegations pertaining to
19 conduct and/or events that occurred before approximately 2019 and none of the named
20 minor Plaintiffs were born before 2011, and therefore this interrogatory seeks information
21 that is not proportional to the needs of this case. Defendant further objects to this
22 interrogatory as it seeks information that is neither relevant to the claims and defenses at
23 issue in the case nor proportional to the needs of the case given that Plaintiffs' Amended
24 Complaint makes no allegation regarding the "process" used by ADHS/BVR to determine
25 whether a physician's written statement complies with A.R.S. § 36-337(A)(3), how
26 ADHS/BVR define, interpret, and/or apply the term "sex change operation," or how
27 ADHS/BVR determine whether a physician's written statement verifies a sex change
28 operation under § 36-337(A)(3).

1 Without waiving these objections, there are no uniform requirements in
2 determining whether a physician's written statement complies with A.R.S. § 36-
3 337(A)(3), how ADHS/BVR defines, interprets, and/or applies the term "sex change
4 operation," or otherwise determines whether a physician's written statement verifies a sex
5 change operation. Rather, all determinations for requests to amend the sex on a registered
6 birth certificate are considered individually, and on a case-by-case basis as each letter
7 from a physician submitted pursuant to A.R.S. § 36-337(A)(3) contains different
8 language. At the very least, a letter submitted pursuant to § 36-337(A)(3) must be on a
9 physician's letterhead and must verify that the individual's sex has been changed as a
10 result of surgery.

11 **INTERROGATORY NO. 7:**

12 Describe and explain the process used by ADHS to develop and then purportedly
13 reverse the opposition to requests by transgender individuals to CHANGE the sex listed
14 on their BIRTH RECORDS, including but not limited to the process that resulted in the
15 "Arizona Department of Health Services' Objection to Order to Amend Applicant's
16 Registered Birth Certificate" filed on February 15, 2017 in the Superior Court for Pima
17 County.

18 **RESPONSE:**

19 Objection: Compound. Defendant objects to this entire interrogatory as vague,
20 confusing, ambiguous, and irrelevant. It is unclear what information Plaintiffs are seeking
21 when they refer to the "process used by ADHS to develop and then purportedly reverse
22 the opposition to requests by transgender individuals to CHANGE the sex listed on their
23 BIRTH RECORDS." Information responsive to this interrogatory, if any, in no way
24 relates to Plaintiffs' claims regarding A.R.S. § 36-337(A)(3). Vague, ambiguous,
25 confusing, irrelevant, and overbroad as to "BIRTH RECORD," as Plaintiffs' definition of
26 "BIRTH RECORD" is virtually unlimited in time and scope and encompasses
27 documentation and/or information that is not relevant to the claims or defenses in this
28 lawsuit and is therefore unduly burdensome and not proportional to the needs of this case.

1 Defendant objects to this interrogatory to the extent it seeks information concerning a
2 “CHANGE” to the sex listed on “BIRTH RECORDS,” as Plaintiffs’ definition of
3 “CHANGE” is vague, confusing, irrelevant, overbroad, unduly burdensome, and not
4 proportional to the needs of the case in that it includes information related to “corrections”
5 to registered birth certificates defined in A.R.S. § 36-301(6), which are not “amendments”
6 governed by A.R.S. § 36-337 and are therefore not at issue in this case. Defendant further
7 objects to this interrogatory as overbroad, unduly burdensome, and irrelevant as to the
8 timeframe from January 1, 2004 to the present, which encompasses information that is not
9 relevant to the claims or defenses in this lawsuit or proportional to the needs of this case
10 given that Plaintiffs’ Amended Complaint is devoid of allegations regarding conduct
11 and/or events that occurred before approximately 2019 and none of the named minor
12 Plaintiffs were born before 2011. Defendant further objects to the extent the information
13 requested contains information protected by the attorney-client privilege, deliberative
14 process privilege, and/or work-product doctrine. *Defendant further objects to the extent*
15 *the information requested contains information protected by the attorney-client*
16 *privilege, deliberative process privilege, and/or work-product doctrine.*

17 *Without waiving these objections, and limiting this response to amendments only,*
18 *prior to July 24, 2017, ADHS considered A.R.S. § 36-337(A)(3) the primary procedure*
19 *by which a person born in Arizona could amend the sex/gender field on a birth*
20 *certificate. The understanding was that A.R.S. § 36-337(A) governed amendments to*
21 *birth certificates in specific situations that were expressly enumerated in the*
22 *subsection—adoptions (A.R.S. § 36-337(A)(1)), voluntary acknowledgements of*
23 *paternity (A.R.S. § 36-337(A)(2)), and sex/gender amendments (A.R.S. § 36-*
24 *337(A)(3))—and that A.R.S. § 36-337(A)(4) applied to all amendments not otherwise*
25 *delineated. Prior to July 24, 2017, if ADHS received a court order to amend the*
26 *sex/gender field on an individual’s birth certificate pursuant to § 36-337(A)(4), ADHS*
27 *would respond to the order in the form of an objection. There was no “process used by*
28 *ADHS to develop and then purportedly reverse the opposition to requests by*

1 *transgender individuals to CHANGE the sex listed on their BIRTH RECORDS.”*

2 *In May 2017, ADHS denied a sex/gender amendment application based on a*
3 *court order pursuant to A.R.S. § 36-337(A)(4). The applicant appealed this denial. An*
4 *administrative hearing was held in front of an Administrative Law Judge, at which time*
5 *ADHS presented its interpretation of § 36-337(A)(4) as its basis for denying the*
6 *amendment application. The Administrative Law Judge disagreed with ADHS’s*
7 *interpretation of this subsection and granted the applicant’s appeal in a decision dated*
8 *June 26, 2017. On July 24, 2017, ADHS’s Director adopted the Administrative Law*
9 *Judge’s decision in a Final Decision and granted the applicant’s appeal and amended*
10 *the sex on the applicant’s birth certificate. Following this July 24, 2017, Final*
11 *Decision, ADHS has applied § 36-337(A)(4) in conjunction with the Administrative*
12 *Law Judge’s June 26, 2017, decision, and ADHS’s Final Decision, and accepts court*
13 *orders to amend the sex/gender on Arizona birth certificates.*

14 **INTERROGATORY NO. 8:**

15 List and IDENTIFY all PERSONS who are or were involved in the process
16 described in YOUR response to Interrogatory No. 7.

17 **RESPONSE:**

18 *Defendant incorporates all objections to Interrogatory No. 7.*

19 *Without waiving any objections, the following individuals may have information*
20 *regarding the interpretation and/or application of A.R.S. § 36-337(A) prior to July 24,*
21 *2017, and the decision to change the interpretation and/or application of A.R.S. § 36-*
22 *337(A) after July 24, 2017:*

- 23 • *Patricia Adams, former Assistant State Registrar, ADHS*
- 24 • *Cara Christ, former Director of ADHS*
- 25 • *Will Humble, former Director of ADHS*
- 26 • *Colby Bower, former Assistant Director of Licensing Services and former*
27 *Assistant Director for Policy and Intergovernmental Affairs, ADHS*
- 28 • *Robert Lane, Chief Administrative Counsel, ADHS*

- 1 • *Krystal Colburn, Bureau Chief and Assistant State Registrar, ADHS*
- 2 • *Thomas Salow, former Deputy Assistant Director of Licensing and*
- 3 *Branch Chief, and Interim Assistant Director of Licensing Services,*
- 4 *ADHS*
- 5 • *Robin Rodriguez, former Operations Chief and Fraud Manager, BVR,*
- 6 *ADHS*
- 7 • *Toni Miller, Policy Manager and Community Partner Liaison, BVR,*
- 8 *ADHS*

9 **INTERROGATORY NO. 9:**

10 Describe and explain YOUR purported governmental interest(s) or other
11 justification(s) under the Equal Protection Clause of the Fourteenth Amendment of the
12 United States Constitution for denying transgender individuals who have not undergone a
13 “sex change operation” the ability to CHANGE the sex listed on their BIRTH RECORDS
14 under subsection (A)(3) of Arizona Revised Statute section 36-337.

15 **RESPONSE:**

16 Objection: Vague and ambiguous as to “purported governmental interest(s)” and
17 “other justification(s).” Defendant objects to this interrogatory as improper because it
18 requires Defendant to respond with a legal argument and an ultimate legal conclusion, and
19 improperly seeks the mental impressions and legal conclusions of counsel for Defendant,
20 which is protected by the attorney-client privilege and/or work-product doctrine. This
21 interrogatory is vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
22 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
23 and scope and encompasses documentation and/or information that is not relevant to the
24 claims or defenses in this lawsuit and is therefore unduly burdensome and not
25 proportional to the needs of this case. Defendant also objects to this interrogatory to the
26 extent it seeks information concerning a “CHANGE,” as Plaintiffs’ definition of
27 “CHANGE” is vague, confusing, irrelevant, and overbroad, and includes information
28 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),

1 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
2 in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,
3 and irrelevant as to the timeframe from January 1, 2004 to the present, which
4 encompasses information that is not relevant to the claims or defenses in this lawsuit or
5 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
6 of allegations regarding conduct and/or events that occurred before approximately 2019
7 and none of the named minor Plaintiffs were born before 2011.

8 Moreover, a response to this interrogatory requires an assumption that Plaintiffs’
9 equal protection rights have been violated when they have not. In addition, Defendant
10 denies that transgender individuals who have not undergone a “sex change operation” are
11 prevented, excluded, or otherwise barred from amending the sex marker listed on their
12 registered birth certificates. All transgender individuals in the State of Arizona have the
13 opportunity to amend the sex listed on their registered birth certificates by seeking a court
14 order pursuant to A.R.S. § 36-337(A)(4).

15 Finally, this interrogatory seeks information regarding legislative intent, and the
16 creation, construction, and adoption of relevant Arizona statutes, as a “governmental
17 interest” and/or “other justification” could only have been considered by the Arizona
18 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,
19 construction, and adoption of Arizona statutes is not a function of ADHS, and neither
20 ADHS, nor Defendant, were involved in or have ever been involved in this process.
21 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature
22 and cannot be answered by Defendant. No response is being provided. *Defendant will*
23 *consider supplementing this response should Plaintiffs rephrase this Interrogatory so*
24 *that it does not seek a legal conclusion.*

25 **INTERROGATORY NO. 10:**

26 State all facts supporting YOUR response to Interrogatory No. 9.

27 **RESPONSE:**

28 Defendant is not providing a response to this interrogatory pursuant to the

1 objections to Interrogatory No. 9, above. *Defendant will consider supplementing this*
2 *response should Plaintiffs rephrase Interrogatory No. 9 so that it does not seek a legal*
3 *conclusion.*

4 **INTERROGATORY NO. 11:**

5 Describe and explain YOUR purported governmental interest(s) or other
6 justification(s) under the Substantive Due Process Right to Privacy of the Fourteenth
7 Amendment of the United States Constitution for denying transgender individuals who
8 have not undergone a “sex change operation” the ability to CHANGE the sex listed on
9 their BIRTH RECORDS under subsection (A)(3) of Arizona Revised Statute section 36-
10 337.

11 **RESPONSE:**

12 Objection: Vague and ambiguous as to “purported governmental interest(s)” and
13 “other justification(s).” Defendant objects to this interrogatory as improper because it
14 requires Defendant to respond with a legal argument and an ultimate legal conclusion, and
15 improperly seeks the mental impressions and legal conclusions of counsel for Defendant,
16 which is protected by the attorney-client privilege and/or work-product doctrine. This
17 interrogatory is vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
18 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
19 and scope and encompasses documentation and/or information that is not relevant to the
20 claims or defenses in this lawsuit and is therefore unduly burdensome and not
21 proportional to the needs of this case. Defendant also objects to this interrogatory to the
22 extent it seeks information concerning a “CHANGE,” as Plaintiffs’ definition of
23 “CHANGE” is vague, confusing, irrelevant, and overbroad, and includes information
24 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
25 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
26 in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,
27 and irrelevant as to the timeframe from January 1, 2004 to the present, which
28 encompasses information that is not relevant to the claims or defenses in this lawsuit or

1 proportional to the needs of this case given that Plaintiffs' Amended Complaint is devoid
2 of allegations regarding conduct and/or events that occurred before approximately 2019
3 and none of the named minor Plaintiffs were born before 2011.

4 Moreover, Plaintiffs do not have a recognized substantive due process right under
5 the Fourteenth Amendment of the United States Constitution to amend their birth
6 certificates free of administrative or judicial processes and answering this interrogatory
7 requires an assumption that Plaintiffs' substantive due process rights have been violated
8 when they have not. In addition, Defendant denies that transgender individuals who have
9 not undergone a "sex change operation" are prevented, excluded, or otherwise barred from
10 amending the sex marker listed on their registered birth certificates. All transgender
11 individuals in the State of Arizona have the opportunity to amend the sex listed on their
12 registered birth certificates by seeking a court order pursuant to A.R.S. § 36-337(A)(4).

13 Finally, this interrogatory seeks information regarding legislative intent, and the
14 creation, construction, and adoption of relevant Arizona statutes, as a "governmental
15 interest" and/or "other justification" could only have been considered by the Arizona
16 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,
17 construction, and adoption of Arizona statutes is not a function of ADHS, and neither
18 ADHS, nor Defendant, were involved in or have ever been involved in this process.
19 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature
20 and cannot be answered by Defendant. No response is being provided. *Defendant will*
21 *consider supplementing this response should Plaintiffs rephrase this Interrogatory so*
22 *that it does not seek a legal conclusion.*

23 **INTERROGATORY NO. 12:**

24 State all facts supporting YOUR response to Interrogatory No. 11.

25 **RESPONSE:**

26 Defendant is not providing a response to this interrogatory pursuant to the
27 objections to Interrogatory No. 11, above. *Defendant will consider supplementing this*
28 *response should Plaintiffs rephrase Interrogatory No. 11 so that it does not seek a legal*

1 *conclusion.*

2 **INTERROGATORY NO. 13:**

3 Describe and explain YOUR purported governmental interest(s) or other
4 justification(s) under the Substantive Due Process Right to Individual Liberty and
5 Autonomy of the Fourteenth Amendment of the United States Constitution for denying
6 transgender individuals who have not undergone a “sex change operation” the ability to
7 CHANGE the sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona
8 Revised Statute section 36-337.

9 **RESPONSE:**

10 Objection: Vague and ambiguous as to “purported governmental interest(s)” and
11 “other justification(s).” Defendant objects to this interrogatory as improper because it
12 requires Defendant to respond with a legal argument and an ultimate legal conclusion, and
13 improperly seeks the mental impressions and legal conclusions of counsel for Defendant,
14 which is protected by the attorney-client privilege and/or work-product doctrine. This
15 interrogatory is vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
16 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
17 and scope and encompasses documentation and/or information that is not relevant to the
18 claims or defenses in this lawsuit and is therefore unduly burdensome and not
19 proportional to the needs of this case. Defendant also objects to this interrogatory to the
20 extent it seeks information concerning a “CHANGE,” as Plaintiffs’ definition of
21 “CHANGE” is vague, confusing, irrelevant, and overbroad, and includes information
22 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
23 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
24 in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,
25 and irrelevant as to the timeframe from January 1, 2004 to the present, which
26 encompasses information that is not relevant to the claims or defenses in this lawsuit or
27 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
28 of allegations regarding conduct and/or events that occurred before approximately 2019

1 and none of the named minor Plaintiffs were born before 2011.

2 Moreover, Plaintiffs do not have a recognized substantive due process right under
3 the Fourteenth Amendment of the United States Constitution to amend their birth
4 certificates free of administrative or judicial processes and answering this interrogatory
5 requires an assumption that Plaintiffs' substantive due process rights have been violated
6 when they have not. In addition, Defendant denies that transgender individuals who have
7 not undergone a "sex change operation" are prevented, excluded, or otherwise barred from
8 amending the sex marker listed on their registered birth certificates. All transgender
9 individuals in the State of Arizona have the opportunity to amend the sex listed on their
10 registered birth certificates by seeking a court order pursuant to A.R.S. § 36-337(A)(4).

11 Finally, this interrogatory seeks information regarding legislative intent, and the
12 creation, construction, and adoption of relevant Arizona statutes, as a "governmental
13 interest" and/or "other justification" could only have been considered by the Arizona
14 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,
15 construction, and adoption of Arizona statutes is not a function of ADHS, and neither
16 ADHS, nor Defendant, were involved in or have ever been involved in this process.
17 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature
18 and cannot be answered by Defendant. No response is being provided. *Defendant will*
19 *consider supplementing this response should Plaintiffs rephrase this Interrogatory so*
20 *that it does not seek a legal conclusion.*

21 **INTERROGATORY NO. 14:**

22 State all facts supporting YOUR response to Interrogatory No. 13.

23 **RESPONSE:**

24 Defendant is not providing a response to this interrogatory pursuant to the
25 objections to Interrogatory No. 13, above. *Defendant will consider supplementing this*
26 *response should Plaintiffs rephrase Interrogatory No. 13 so that it does not seek a legal*
27 *conclusion.*

1 **INTERROGATORY NO. 15:**

2 Describe and explain YOUR purported governmental interest(s) or other
3 justification(s) under the Substantive Due Process Right to choose whether to undergo a
4 particular medical treatment of the Fourteenth Amendment of the United States
5 Constitution for denying transgender individuals who have not undergone a “sex change
6 operation” the ability to CHANGE the sex listed on their BIRTH RECORDS under
7 subsection (A)(3) of Arizona Revised Statute section 36-337.

8 **RESPONSE:**

9 Objection: Vague and ambiguous as to “purported governmental interest(s)” and
10 “other justification(s).” Defendant objects to this interrogatory as improper because it
11 requires Defendant to respond with a legal argument and an ultimate legal conclusion, and
12 improperly seeks the mental impressions and legal conclusions of counsel for Defendant,
13 which is protected by the attorney-client privilege and/or work-product doctrine. This
14 interrogatory is vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
15 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
16 and scope and encompasses documentation and/or information that is not relevant to the
17 claims or defenses in this lawsuit and is therefore unduly burdensome and not
18 proportional to the needs of this case. Defendant also objects to this interrogatory to the
19 extent it seeks information concerning a “CHANGE,” as Plaintiffs’ definition of
20 “CHANGE” is vague, confusing, irrelevant, and overbroad, and includes information
21 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
22 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
23 in this case. Defendant objects to this interrogatory as overbroad, unduly burdensome,
24 and irrelevant as to the timeframe from January 1, 2004 to the present, which
25 encompasses information that is not relevant to the claims or defenses in this lawsuit or
26 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
27 of allegations regarding conduct and/or events that occurred before approximately 2019
28 and none of the named minor Plaintiffs were born before 2011.

1 Moreover, Plaintiffs do not have a recognized substantive due process right under
2 the Fourteenth Amendment of the United States Constitution to amend their birth
3 certificates free of administrative or judicial processes, nor do they have a substantive due
4 process right to “choose whether to undergo a particular medical treatment.” Thus,
5 answering this interrogatory requires an assumption that Plaintiffs’ substantive due
6 process rights have been violated when they have not. In addition, Defendant denies that
7 transgender individuals who have not undergone a “sex change operation” are prevented,
8 excluded, or otherwise barred from amending the sex marker listed on their registered
9 birth certificates. All transgender individuals in the State of Arizona have the opportunity
10 to amend the sex listed on their registered birth certificates by seeking a court order
11 pursuant to A.R.S. § 36-337(A)(4).

12 Finally, this interrogatory seeks information regarding legislative intent, and the
13 creation, construction, and adoption of relevant Arizona statutes, as a “governmental
14 interest” and/or “other justification” could only have been considered by the Arizona
15 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,
16 construction, and adoption of Arizona statutes is not a function of ADHS, and neither
17 ADHS, nor Defendant, were involved in or have ever been involved in this process.
18 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature
19 and cannot be answered by Defendant. No response is being provided. *Defendant will*
20 *consider supplementing this response should Plaintiffs rephrase this Interrogatory so*
21 *that it does not seek a legal conclusion.*

22 **INTERROGATORY NO. 16:**

23 State all facts supporting YOUR response to Interrogatory No. 15.

24 **RESPONSE:**

25 Defendant is not providing a response to this interrogatory pursuant to the
26 objections to Interrogatory No. 15, above. *Defendant will consider supplementing this*
27 *response should Plaintiffs rephrase Interrogatory No. 15 so that it does not seek a legal*
28 *conclusion.*

1 **INTERROGATORY NO. 17:**

2 Describe and explain the process used by ADHS and/or BVR to keep information
3 CONCERNING a PERSON'S gender identity or transgender status private or
4 confidential.

5 **RESPONSE:**


6 Objection: Vague and ambiguous as to "process used," "keep information,"
7 "gender identity," "transgender status," "private," and "confidential." Overbroad, unduly
8 burdensome, and irrelevant because "gender identity" and "transgender status" are not
9 fields on an Arizona birth certificate, nor are they terms that are defined in any applicable
10 Arizona Statute or administrative rules governing BVR/ADHS. Defendant also objects
11 that this interrogatory is overbroad, unduly burdensome, and irrelevant as to the time
12 period from January 1, 2004 to the present, which encompasses information that is not
13 relevant to the claims or defenses in this lawsuit or proportional to the needs of this case
14 given that Plaintiffs' Amended Complaint is devoid of allegations regarding conduct
15 and/or events that occurred before approximately 2019, and none of the named minor
16 Plaintiffs were born prior to 2011. Defendant further objects that information responsive
17 this interrogatory, if any, is irrelevant to the claims or defenses in this case.

18 Without waiving these objections, pursuant to A.R.S. § 36-322(A), when a state
19 registrar amends an individual's registered birth certificate, the state registrar is required
20 to seal the original birth certificate and any evidentiary documents used to support the
21 amendment. Under A.R.S. § 36-322(B), the state registrar shall not issue a copy of a
22 sealed certificate or other record unless required by court order and except as provided in
23 § 36-340 (concerning adoptions).

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1 DATED this 28th day of February 2022.

2 STRUCK LOVE BOJANOWSKI & ACEDO, PLC

3
4 By 
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17 The foregoing was emailed this 28th day
18 of February 2022, to:

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EXHIBIT 4

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13 *Attorneys for Defendant*

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

17 Helen Roe, a minor, by and through her parent
 and next friend Megan Roe, et al.,

18 Plaintiffs,

19 v.

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

23 Defendant.

NO. 4:20-cv-00484-JAS

**DEFENDANT’S FIRST
 SUPPLEMENTAL RESPONSES TO
 PLAINTIFFS’ FIRST SET OF
 REQUESTS FOR PRODUCTION**

24 Pursuant to Federal Rule of Civil Procedure 34, Defendant Don Herrington
 25 (“Defendant”), through counsel, hereby responds to Plaintiffs’ First Set of Requests for
 26 Production as follows. Defendant reserves the right to supplement these responses as
 27 necessary and as discovery continues. *Supplemental information is in bold italics.*
 28

**DEFENDANT’S OBJECTIONS TO
PLAINTIFFS’ DEFINITIONS AND INSTRUCTIONS**

1
2
3 Defendant objects to Plaintiffs’ definition of “BIRTH RECORD.” “BIRTH
4 RECORD” is not defined within the applicable Arizona Revised Statute sections,
5 specifically A.R.S. § 36-301, and confuses applicable and existing terminology contained
6 in A.A.C. §§ R9-19-101 and R9-19-201. Plaintiffs’ definition of “BIRTH RECORD” is
7 vague, ambiguous, confusing, irrelevant, and overbroad because it is virtually unlimited in
8 time and scope and encompasses documentation and/or information that is not relevant to
9 the claims in Plaintiffs’ Amended Complaint. Moreover, “BIRTH RECORD,” as defined
10 by Plaintiffs, potentially includes information that is confidential and protected from
11 disclosure and/or sealed pursuant to A.R.S. § 36-322 (requiring the state registrar to seal a
12 birth certificate and any evidentiary documents when a registered birth certificate is
13 amended, and that any sealed record shall be accessible only via a state-issued court order
14 (*see* definition of “court order” in A.R.S. § 36-301(7)); A.R.S. § 36-324(A) (prohibiting
15 the issuance of any medical information related to birth registration); and A.R.S. § 36-342
16 (prohibiting the inspection or disclosure of a vital record, evidentiary documentation
17 supporting a vital record, or information contained in a vital record). In addition, it is
18 unclear what Plaintiffs mean by “or related information in an electronic database.” To the
19 extent this definition includes Electronically Stored Information (“ESI”), the parties have
20 not *reached an* agreement on an ESI search protocol, including appropriate search terms
21 and queries, file type and date restrictions, data sources, and custodians.

22 Defendant also objects to Plaintiffs’ definitions of “BIRTH RECORD” and
23 “CHANGE” to the extent they encompass “correction(s)” made to a registered birth
24 certificate. A birth certificate registered in the State of Arizona can only be amended
25 and/or corrected pursuant to A.R.S. § 36-323. The Arizona Legislature has defined
26 “correction” as “a change made to a registered birth certificate because of a typographical
27 error, including misspelling and missing or transposed letters or numbers.” A.R.S. § 36-
28 301(6). It has defined “amend” as “a change, other than a correction, to a registered

1 certificate by adding, deleting or substituting information on that certificate.” A.R.S. §
2 36-301(2). Plaintiffs have not asserted any claims or allegations regarding corrections to
3 registered birth certificates. Accordingly, Defendant objects to these definitions to the
4 extent they include information regarding corrections as defined by A.R.S. § 36-301(6) as
5 vague, confusing, irrelevant, overbroad, unduly burdensome, and not proportional to the
6 needs of this case. Defendant will interpret “CHANGE” to mean “amend” as defined by
7 A.R.S. § 36-301(2).

8 Finally, Defendant objects to the time period contained in Instruction No. 1 of
9 Plaintiffs’ Instructions section. Plaintiffs’ Amended Complaint is devoid of allegations
10 regarding conduct and/or events that occurred before approximately 2019 and none of the
11 named minor Plaintiffs were born before 2011 and could not have had an Arizona birth
12 certificate before then. Information from January 1, 2004 to the present—a time period of
13 almost 18 years—is not relevant to the claims or defenses in this lawsuit, and is
14 overbroad, irrelevant, unduly burdensome, and not proportional to the needs of this case.
15 ADHS also has a document retention policy in place that allows for the destruction of
16 certain documents after a period of three years. Some or all the documents requested by
17 Plaintiffs dating back to 2004 may have been destroyed pursuant to this document
18 retention policy.

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

20 All DOCUMENTS and COMMUNICATIONS RELATING TO any BIRTH
21 RECORD for any of the Plaintiffs in this ACTION.

22 **RESPONSE:**

23 Objection: Vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
24 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
25 and scope and encompasses documentation and/or information that is not relevant to the
26 claims or defenses in this lawsuit and is therefore unduly burdensome and not
27 proportional to the needs of this case. Defendant also objects to the extent this Request
28 seeks information that is confidential and protected from disclosure and/or sealed pursuant

1 to A.R.S. § 36-322 (requiring the state registrar to seal a birth certificate and any
2 evidentiary documents when a registered birth certificate is amended, and that any sealed
3 record shall be accessible only via a state-issued court order (*see* definition of “court
4 order” in A.R.S. § 36-301(7)); A.R.S. § 36-324(A) (prohibiting the issuance of any
5 medical information related to birth registration); and A.R.S. § 36-342 (prohibiting the
6 inspection or disclosure of a vital record, evidentiary documentation supporting a vital
7 record, or information contained in a vital record). Defendant objects to this Request as
8 overbroad, unduly burdensome, and irrelevant as to time and scope, as it seeks
9 information that is not relevant to the claims or defenses in this lawsuit or proportional to
10 the needs of this case given that Plaintiffs’ Amended Complaint is devoid of allegations
11 regarding conduct and/or events that occurred before approximately 2019 and none of the
12 named minor Plaintiffs were born before 2011. Defendant objects to the extent any
13 documents responsive to this Request were destroyed pursuant to ADHS’s three-year
14 document retention policy. Defendant objects to the extent this Request seeks information
15 protected by the attorney-client privilege, the work product doctrine, and/or any other
16 applicable privilege. Defendant further objects to the Request as it seeks production of
17 ESI which can only be discovered through an email or system search and where the
18 parties have not conferred or attempted to reach an agreement on a search protocol,
19 including appropriate search terms and queries, file type and date restrictions, data
20 sources, and custodians.

21 Without waiving these objections, Defendant is producing the certificates of live
22 birth, and requests for copies of the certificates of live birth for each of the named
23 Plaintiffs as CONFIDENTIAL pursuant to the parties’ Protective Order. [ADHS000096 –
24 ADHS000102]. Information that was provided to create the certificates of live birth for
25 each named Plaintiff was entered into the electronic vital records system. Defendant has
26 not conducted a search of available ESI but will do so once the parties have agreed to a
27 search protocol.

28 ///

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

2 All DOCUMENTS and COMMUNICATIONS CONCERNING any ADHS and/or
3 BVR POLICY CONCERNING a CHANGE or request to CHANGE the sex listed on a
4 BIRTH RECORD.

5 **RESPONSE:**

6 Objection: Vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
7 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
8 and scope and encompasses documentation and/or information that is not relevant to the
9 claims or defenses in this lawsuit and is therefore unduly burdensome and not
10 proportional to the needs of this case. Defendant also objects to this Request as
11 overbroad, unduly burdensome, and irrelevant because it seeks all documents and
12 communications concerning any ADHS and/or BVR policy concerning a “CHANGE” or
13 request to “CHANGE” the sex listed on a birth record from January 1, 2004 to the present,
14 which encompasses information that is not relevant to the claims or defenses in this
15 lawsuit or proportional to the needs of this case given that Plaintiffs’ Amended Complaint
16 is devoid of allegations regarding conduct and/or events that occurred before
17 approximately 2019 and none of the named minor Plaintiffs were born before 2011.
18 Defendant objects to the extent any documents responsive to this Request were destroyed
19 pursuant to ADHS’s three-year document retention policy. Defendant also objects to this
20 Request to the extent it seeks information concerning a “CHANGE” or request to
21 “CHANGE” as Plaintiffs’ definition of “CHANGE” is vague, confusing, irrelevant,
22 overbroad, unduly burdensome, and not proportional to the needs of the case in that it
23 includes information related to “corrections” to registered birth certificates defined in
24 A.R.S. § 36-301(6), which are not “amendments” governed by A.R.S. § 36-337 and are
25 therefore not at issue in this case. Defendant will interpret “CHANGE” to mean “amend”
26 as defined by A.R.S. § 36-301(2).

27 Defendant objects to the extent this Request seeks information protected by the
28 attorney-client privilege, the work product doctrine, the deliberative process privilege,

1 and/or any other applicable privilege. Defendant further objects to the Request as it seeks
2 production of ESI which can only be discovered through an email or system search and
3 where the parties have not conferred or attempted to reach an agreement on a search
4 protocol, including appropriate search terms and queries, file type and date restrictions,
5 data sources, and custodians.

6 Without waiving these objections, Defendant is producing the following:

- 7 • Bureau of Vital Records Desk Procedure for Corrections and Amendments.
8 [ADHS000287 – ADHS000293]
- 9 • Amendments to Birth Records, BVR Policy No. 014, Dated October 18,
10 2016. [ADHS000103 – ADHS000121]
- 11 • Amendments to Birth Records, BVR Policy No. 014, Dated January 23,
12 2017. [ADHS000122 – ADHS000140]
- 13 • Amendments to Birth Records, BVR Policy No. 014, Dated October 1,
14 2018. [ADHS000141 – ADHS000159]
- 15 • Amendments to Birth Records, BVR Policy No. 014, Dated March 28,
16 2019. [ADHS000160 – ADHS000178]

17 *See also* Amendments to Birth Records, BVR Policy No. 014, Dated August 7, 2020, at
18 ADHS000007 – ADHS000023 produced with Defendant’s Initial Disclosure Statement,
19 and A.A.C. § R9-19-208. Defendant has not conducted a search of available ESI but will
20 do so once the parties have agreed to a search protocol.

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

22 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR
23 implementation or enforcement of subsections (A)(3) or (A)(4) of Arizona Revised
24 Statutes section 36-337.

25 **RESPONSE:**

26 Objection: Vague and ambiguous as to “implementation” and “enforcement.”
27 Defendant objects to this Request as overbroad, unduly burdensome, irrelevant, and not
28 proportional to the needs of the case as the terms “implementation” and “enforcement” are

1 not defined or reasonably limited in scope and because Plaintiffs seek information from
2 January 1, 2004 to the present when Plaintiffs' Amended Complaint is devoid of
3 allegations pertaining to conduct and/or events that occurred before approximately 2019
4 and none of the named minor Plaintiffs were born before 2011. Defendant objects to the
5 extent any documents responsive to this Request were destroyed pursuant to ADHS's
6 three-year document retention policy. Defendant further objects to the extent this Request
7 seeks information protected by the attorney-client privilege, the work product doctrine,
8 the deliberative process privilege, and/or any other applicable privilege. Defendant
9 objects to the Request as it seeks production of ESI which can only be discovered through
10 an email or system search and where the parties have not conferred or attempted to reach
11 an agreement on a search protocol, including appropriate search terms and queries, file
12 type and date restrictions, data sources, and custodians.

13 Without waiving these objections, see all documents produced in response to
14 Request No. 2, above, as well as Amendments to Birth Records, BVR Policy No. 014,
15 Dated August 7, 2020, at ADHS000007 – ADHS000023 produced with Defendant's
16 Initial Disclosure Statement, A.A.C. § R9-19-208, and *In re Marriage of McLaughlin and*
17 *Swanson*, 250 Ariz. 156 (App. 2020). Defendant has not conducted a search of available
18 ESI but will do so once the parties have agreed to a search protocol.

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

20 All DOCUMENTS and COMMUNICATIONS considered or relied upon by YOU
21 when considering, developing, drafting, adopting, or otherwise creating subsections (O) or
22 (P) of Arizona Administrative Code section R9-19-208, or when considering, developing,
23 drafting, adopting, or otherwise creating any CHANGES to those subsections.

24 **RESPONSE:**

25 Objection: Vague and ambiguous as to "considered" and "relied upon." Defendant
26 objects to this Request as overbroad, unduly burdensome, and irrelevant as to the
27 timeframe from January 1, 2004 to the present, which encompasses information that is not
28 relevant to the claims or defenses in this lawsuit or proportional to the needs of this case

1 given that Plaintiffs' Amended Complaint is devoid of allegations regarding conduct
2 and/or events that occurred before approximately 2019 and none of the named minor
3 Plaintiffs were born before 2011. Defendant objects to the extent any documents
4 responsive to this Request were destroyed pursuant to ADHS's three-year document
5 retention policy. Defendant also objects to the extent this Request seeks information
6 protected by the attorney-client privilege, the work product doctrine, the deliberative
7 process privilege, and/or any other applicable privilege. Defendant objects to this Request
8 as it seeks production of ESI which can only be discovered through an email or system
9 search and where the parties have not conferred or attempted to reach an agreement on a
10 search protocol, including appropriate search terms and queries, file type and date
11 restrictions, data sources, and custodians. Defendant further objects that this Request is
12 vague, ambiguous, overbroad, unduly burdensome, irrelevant, and not proportional to the
13 needs of this case because "all" documents and communications concerning "considering,
14 developing, drafting, adopting, or otherwise creating subsections (O) or (P) of Arizona
15 Administrative Code section R9-19-208, or when considering, developing, drafting,
16 adopting, or otherwise creating any CHANGES to those subsections" is not reasonably
17 limited in scope.

18 Without waiving these objections, *see* A.R.S. § 36-301, A.R.S. § 36-337, and
19 A.A.C. § R9-19-208, as well as prior versions of A.A.C. Title 9, Chapter 19, which are on
20 file with the Arizona Secretary of State. *See also* National Association for Public Health
21 Statistics and Information Systems ("NAPHSIS") Model State Vital Statistics
22 Regulations, 1992 Revision produced as ADHS000180 – ADHS000219 and 2011
23 Revision produced as ADHS000220 – ADHS000286. Defendant will supplement this
24 response with any non-privileged rulemaking documents that might exist. Defendant has
25 not conducted a search of available ESI but will do so once the parties have agreed to a
26 search protocol.

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

28 All DOCUMENTS and COMMUNICATIONS CONCERNING the term "sex

1 change operation” as used in subsection (A)(3) of Arizona Revised Statutes section 36-
2 337.

3 **RESPONSE:**

4 Objection: Overbroad, unduly burdensome, and irrelevant as to the time period
5 between January 1, 2004 to the present because Plaintiffs’ Amended Complaint is devoid
6 of allegations pertaining to conduct and/or events that occurred before approximately
7 2019 and none of the named minor Plaintiffs were born before 2011, and therefore this
8 Request is not proportional to the needs of this case. Defendant objects to the extent any
9 documents responsive to this Request were destroyed pursuant to ADHS’s three-year
10 document retention policy. Defendant further objects that this Request is overbroad,
11 unduly burdensome, irrelevant, and not proportional to the needs of this case because “all”
12 documents and communications “concerning” the term “sex change operation” is not
13 reasonably limited in scope. Defendant objects to the extent this Request seeks
14 information protected by the attorney-client privilege, the work product doctrine, the
15 deliberative process privilege, and/or any other applicable privilege. Defendant further
16 objects to the Request as it seeks production of ESI which can only be discovered through
17 an email or system search and where the parties have not conferred or attempted to reach
18 an agreement on a search protocol, including appropriate search terms and queries, file
19 type and date restrictions, data sources, and custodians.

20 Without waiving these objections, when interpreting and implementing statutes to
21 draft administrative rules, ADHS follows general rules of statutory construction, including
22 but not limited to those that are stated in A.R.S. Title 1, Chapter 2, Article 2. The term
23 “sex change operation” is not defined in any applicable statute, regulation, or
24 administrative rule, and Defendant is not in possession of any document that defines this
25 term. Defendant has not conducted a search of available ESI but will do so once the
26 parties have agreed to a search protocol.

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

28 All DOCUMENTS and COMMUNICATIONS CONCERNING any POLICY of

1 ADHS and/or BVR CONCERNING how those entities define, interpret, implement,
2 apply, or otherwise consider any words, phrases, or terms that are not defined by statute or
3 other applicable law.

4 **RESPONSE:**

5 Objection: Vague and ambiguous as to “define,” “interpret,” “implement,” “apply,”
6 and “otherwise consider.” Overbroad, unduly burdensome, and irrelevant as to the time
7 period between January 1, 2004 to the present because Plaintiffs’ Amended Complaint is
8 devoid of allegations pertaining to conduct and/or events that occurred before
9 approximately 2019 and none of the named minor Plaintiffs were born before 2011, and
10 therefore this Request is not proportional to the needs of this case. Defendant objects to
11 the extent any documents responsive to this Request were destroyed pursuant to ADHS’s
12 three-year document retention policy. Defendant objects to the extent this Request seeks
13 information protected by the attorney-client privilege, the work product doctrine, the
14 deliberative process privilege and/or any other applicable privilege. Defendant further
15 objects to this Request as it seeks production of ESI which can only be discovered through
16 an email or system search and where the parties have not conferred or attempted to reach
17 an agreement on a search protocol, including appropriate search terms and queries, file
18 type and date restrictions, data sources, and custodians. Defendant further objects that this
19 Request is vague, ambiguous, confusing, overbroad, unduly burdensome, irrelevant, and
20 not proportional to the needs of this case because “all” documents and communications
21 concerning how ADHS/BVR “define[s], interpret[s], implement[s], appl[ies], or otherwise
22 consider[s] any words, phrases, or terms that are not defined by statute or other applicable
23 law,” is not reasonably limited in scope, nor is it clear what other “words, phrases, or
24 terms” Plaintiffs are referring to.

25 Without waiving these objections, when interpreting and implementing statutes to
26 draft administrative rules, ADHS follows general rules of statutory construction, including
27 but not limited to those that are stated in A.R.S. Title 1, Chapter 2, Article 2. Defendant is
28 not in possession of any documents responsive to this Request. Defendant has not

1 conducted a search of available ESI but will do so once the parties have agreed to a search
2 protocol.

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

4 All DOCUMENTS and COMMUNICATIONS sent by, to, or within ADHS and/or
5 BVR CONCERNING Arizona House Bill 2081, 54th Legislature, Second Regular
6 Session (2020).

7 **RESPONSE:**

8 Objection: Defendant objects that this Request as overbroad, unduly burdensome,
9 irrelevant, and not proportional to the needs of this case because “all” documents and
10 communications sent by, to, or within ADHS and/or BVR concerning Arizona House Bill
11 2081 is not reasonably limited in scope. Defendant objects to the extent this Request
12 seeks information protected by the attorney-client privilege, the work product doctrine,
13 the deliberative process privilege, and/or any other applicable privilege. Defendant
14 objects to this Request as it seeks production of ESI which can only be discovered through
15 an email or system search and where the parties have not conferred or attempted to reach
16 an agreement on a search protocol, including appropriate search terms and queries, file
17 type and date restrictions, data sources, and custodians. Defendant objects to the extent
18 any documents responsive to this Request were destroyed pursuant to ADHS’s three-year
19 document retention policy.

20 Defendant further objects to this Request, as any and all documents and/or
21 communications (to the extent they exist) sent by, to, or within ADHS and/or BVR
22 concerning Arizona House Bill 2081 have no relevance whatsoever to the claims asserted
23 in Plaintiffs’ Amended Complaint, particularly because Arizona House Bill 2081 was
24 never passed into law. *The proposed additions to A.R.S. §§ 36-333 and 36-335*
25 *contained in Arizona House Bill 2081 involved a requirement that information*
26 *submitted for an individual’s birth certificate include information indicating the*
27 *individuals’ sex as either male or female. This proposed requirement—which did not*
28 *pass and is not law—has nothing to do with amending the sex/gender field on a*

1 *registered birth certificate under A.R.S. § 36-337(A)*. Based on these objections,
2 Defendant is not producing documents responsive to this request, if any exist.

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

4 All DOCUMENTS and COMMUNICATIONS CONCERNING any opposition by
5 ADHS to requests by transgender individuals to CHANGE the sex listed on their BIRTH
6 RECORDS, including but not limited to the “Arizona Department of Health Services’
7 Objection to Order to Amend Applicant’s Registered Birth Certificate” filed on February
8 15, 2017 in the Superior Court for Pima County, Arizona.

9 **RESPONSE:**

10 Objection: Defendant objects to this entire Request as vague, confusing,
11 ambiguous, and irrelevant. It is unclear what information Plaintiffs are seeking when they
12 refer to “any opposition by ADHS to requests by transgender individuals to CHANGE the
13 sex listed on their BIRTH RECORDS,” and information responsive to this Request, if
14 any, in no way relates to Plaintiffs’ claims regarding A.R.S. § 36-337(A)(3). Vague,
15 ambiguous, confusing, irrelevant, and overbroad as to “BIRTH RECORD,” as Plaintiffs’
16 definition of “BIRTH RECORD” is virtually unlimited in time and scope and
17 encompasses documentation and/or information that is not relevant to the claims or
18 defenses in this lawsuit and is therefore unduly burdensome and not proportional to the
19 needs of this case. Defendant objects to this Request to the extent it seeks information
20 concerning a “CHANGE” to the sex listed on “BIRTH RECORDS,” as Plaintiffs’
21 definition of “CHANGE” is vague, confusing, irrelevant, overbroad, unduly burdensome,
22 and not proportional to the needs of the case in that it includes information related to
23 “corrections” to registered birth certificates defined in A.R.S. § 36-301(6), which are not
24 “amendments” governed by A.R.S. § 36-337 and are therefore not at issue in this case.
25 Defendant further objects to this Request as overbroad, unduly burdensome, and irrelevant
26 as to the timeframe from January 1, 2004 to the present, which encompasses information
27 that is not relevant to the claims or defenses in this lawsuit or proportional to the needs of
28 this case given that Plaintiffs’ Amended Complaint is devoid of allegations regarding

1 conduct and/or events that occurred before approximately 2019 and none of the named
2 minor Plaintiffs were born before 2011. Defendant objects to the extent any documents
3 responsive to this Request were destroyed pursuant to ADHS's three-year document
4 retention policy. Defendant also objects to the extent this Request seeks information
5 protected by the attorney-client privilege, the work product doctrine, the deliberative
6 process privilege, and/or any other applicable privilege. Defendant objects to this Request
7 as it seeks production of ESI which can only be discovered through an email or system
8 search and where the parties have not *reached* an agreement on a search protocol,
9 including appropriate search terms and queries, file type and date restrictions, data
10 sources, and custodians.

11 *Without waiving these objections, Defendant does not possess documents*
12 *responsive to this request. Defendant has not conducted a search of available ESI but*
13 *will do so once the parties have agreed to a search protocol.*

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

15 All DOCUMENTS and COMMUNICATIONS CONCERNING the purported
16 reversal of any opposition by ADHS to requests by transgender individuals to CHANGE
17 the sex listed on their BIRTH RECORDS as referenced in Request No. 8 above.

18 **RESPONSE:**

19 Objection: Defendant objects to this entire Request as vague, confusing,
20 ambiguous, and irrelevant. It is unclear what information Plaintiffs are seeking when they
21 refer to "the purported reversal of any opposition by ADHS to requests by transgender
22 individuals to CHANGE the sex listed on their BIRTH RECORDS," and information
23 responsive to this Request, if any, in no way relates to Plaintiffs' claims regarding A.R.S.
24 § 36-337(A)(3). Vague, ambiguous, confusing, irrelevant, and overbroad as to "BIRTH
25 RECORD," as Plaintiffs' definition of "BIRTH RECORD" is virtually unlimited in time
26 and scope and encompasses documentation and/or information that is not relevant to the
27 claims or defenses in this lawsuit and is therefore unduly burdensome and not
28 proportional to the needs of this case. Defendant objects to this Request to the extent it

1 seeks information concerning a “CHANGE” to the sex listed on “BIRTH RECORDS,” as
2 Plaintiffs’ definition of “CHANGE” is vague, confusing, irrelevant, overbroad, unduly
3 burdensome, and not proportional to the needs of the case in that it includes information
4 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
5 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
6 in this case. Defendant further objects to this Request as overbroad, unduly burdensome,
7 and irrelevant as to the timeframe from January 1, 2004 to the present, which
8 encompasses information that is not relevant to the claims or defenses in this lawsuit or
9 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
10 of allegations regarding conduct and/or events that occurred before approximately 2019
11 and none of the named minor Plaintiffs were born before 2011. Defendant objects to the
12 extent any documents responsive to this Request were destroyed pursuant to ADHS’s
13 three-year document retention policy. Defendant also objects to the extent this Request
14 seeks information protected by the attorney-client privilege, the work product doctrine,
15 the deliberative process privilege, and/or any other applicable privilege. Defendant
16 objects to this Request as it seeks production of ESI which can only be discovered through
17 an email or system search and where the parties have not *reached* an agreement on a
18 search protocol, including appropriate search terms and queries, file type and date
19 restrictions, data sources, and custodians.

20 *Without waiving these objections, see the redacted Administrative Law Judge*
21 *Decision dated June 26, 2017 [ADHS000294 – ADHS000299] and ADHS’s Final*
22 *Decision dated July 24, 2017 [ADHS000300 – ADHS000303]. Both documents are*
23 *confidential and are produced pursuant to the parties’ Protective Order.*
24 *Communications responsive to this request, if any, are protected by the attorney-client*
25 *privilege and/or deliberative process privilege and are not being produced.*

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

27 All DOCUMENTS and COMMUNICATIONS CONCERNING the
28 responsibilities and authorities of the BVR Registry Team, its role in granting or denying

1 applications to CHANGE the sex listed on individuals' BIRTH RECORDS, its origins
2 and history, its organizational structure, and the identity and title of its members past and
3 present.

4 **RESPONSE:**

5 Objection: Compound. Vague and ambiguous as to "responsibilities,"
6 "authorities," "role," "origins," and "history." Vague, ambiguous, confusing, irrelevant,
7 and overbroad as to "BIRTH RECORD," as Plaintiffs' definition of "BIRTH RECORD"
8 is virtually unlimited in time and scope and encompasses documentation and/or
9 information that is not relevant to the claims or defenses in this lawsuit and is therefore
10 unduly burdensome and not proportional to the needs of this case. Defendant objects to
11 this Request to the extent it seeks information concerning a "CHANGE" to the sex listed
12 on "BIRTH RECORDS," as Plaintiffs' definition of "CHANGE" is vague, confusing,
13 irrelevant, overbroad, unduly burdensome, and not proportional to the needs of the case in
14 that it includes information related to "corrections" to registered birth certificates defined
15 in A.R.S. § 36-301(6), which are not "amendments" governed by A.R.S. § 36-337 and are
16 therefore not at issue in this case. Defendant further objects to this Request as overbroad,
17 unduly burdensome, and irrelevant as to the timeframe from January 1, 2004 to the
18 present, which encompasses information that is not relevant to the claims or defenses in
19 this lawsuit or proportional to the needs of this case given that Plaintiffs' Amended
20 Complaint is devoid of allegations regarding conduct and/or events that occurred before
21 approximately 2019 and none of the named minor Plaintiffs were born before 2011.
22 Defendant objects to the extent any documents responsive to this Request were destroyed
23 pursuant to ADHS's three-year document retention policy. Defendant objects to the
24 extent this Request seeks information protected by the attorney-client privilege, the work
25 product doctrine, the deliberative process privilege, and/or any other applicable privilege.
26 Defendant also objects to this Request as it seeks production of ESI which can only be
27 discovered through an email or system search and where the parties have not conferred or
28 attempted to reach an agreement on a search protocol, including appropriate search terms

1 and queries, file type and date restrictions, data sources, and custodians. Defendant
2 further objects to this Request as overbroad, unduly burdensome, and not proportional to
3 the needs of this case because the “BVR Registry Team” includes all management,
4 supervisors, and customer service representatives who play any part in any aspect of the
5 registration of birth for BVR. As such, this Request would require the Defendant to find
6 and provide the names, titles, and roles of several hundred current and former employees
7 who were part of the “BVR Registry Team.”

8 Without waiving these objections, Defendant is producing the following
9 documents:

- 10 • BVR Organizational Chart [ADHS000179]
- 11 • *Position Descriptions [ADHS000304 – ADHS000384]*

12 See also Defendant’s response to Plaintiffs’ Interrogatory No. 5 and A.A.C. § R9-
13 19-208. Defendant has not conducted a search of available ESI but will do so once the
14 parties have agreed to a search protocol.

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

16 All COMMUNICATIONS sent by or to YOU, Thomas Salow, Krystal Colburn,
17 Nicole Heath, Toni Miller, Alex Quintana, Heidi Lengdorfer, Kelly Baker, Luana
18 Pallanes, Robin Rodriguez, Richard McKenney, Marcellina Lopez, Julia Mora, Bianco
19 Soto, John Jimenez, Hannah Garcia, Luis Valdez-Ramos, or Holly Baker CONCERNING
20 the interpretation, application, and enforceability of any statute, law, or POLICY
21 CONCERNING a CHANGE or request to CHANGE the sex listed on a BIRTH
22 RECORD.

23 **RESPONSE:**

24 Objection: Vague and ambiguous as to “interpretation,” “application,” and
25 “enforceability.” Vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
26 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
27 and scope and encompasses documentation and/or information that is not relevant to the
28 claims or defenses in this lawsuit and is therefore unduly burdensome and not

1 proportional to the needs of this case. Defendant objects to this Request to the extent it
2 seeks information concerning a “CHANGE” to the sex listed on “BIRTH RECORDS,” as
3 Plaintiffs’ definition of “CHANGE” is vague, confusing, irrelevant, overbroad, unduly
4 burdensome, and not proportional to the needs of the case in that it includes information
5 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
6 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
7 in this case. Defendant further objects to this Request as overbroad, unduly burdensome,
8 and irrelevant as to the timeframe from January 1, 2004 to the present, which
9 encompasses information that is not relevant to the claims or defenses in this lawsuit or
10 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
11 of allegations regarding conduct and/or events that occurred before approximately 2019
12 and none of the named minor Plaintiffs were born before 2011. Defendant objects to the
13 extent any documents responsive to this Request were destroyed pursuant to ADHS’s
14 three-year document retention policy. Defendant objects to the extent this Request seeks
15 information protected by the attorney-client privilege, the work product doctrine, the
16 deliberative process privilege, and/or any other applicable privilege. Defendant also
17 objects to this Request as it seeks production of ESI which can only be discovered through
18 an email or system search and where the parties have not conferred or attempted to reach
19 an agreement on a search protocol, including appropriate search terms and queries, file
20 type and date restrictions, data sources, and custodians. Defendant further objects that this
21 Request is vague, ambiguous, confusing, overbroad, unduly burdensome, irrelevant, and
22 not proportional to the needs of this case because “all” documents and communications
23 concerning the “interpretation, application, and enforceability of any statute, law, or
24 POLICY” is not reasonably limited in scope, nor is it clear what “statute, law, or
25 POLICY” Plaintiffs are referring to.

26 Without waiving these objections, Defendant is not in possession of documents
27 responsive to this Request. Defendant has not conducted a search of available ESI but
28 will do so once the parties have agreed to a search protocol.

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

2 All DOCUMENTS and COMMUNICATIONS CONCERNING any POLICY of
3 ADHS or BVR to accept federal court orders as the basis to CHANGE any part of a
4 BIRTH RECORD, including but not limited to Section B.4 of the ADHS document dated
5 May 18, 2020 with the title “Court Orders and Subpoenas.”

6 **RESPONSE:**

7 Objection: Vague and ambiguous as to “accept,” “federal court orders,” and “basis.
8 Defendant further objects that “Section B.4 of the ADHS document dated May 18, 2020
9 with the title ‘Court Orders and Subpoenas’” is too vague to know what document
10 Plaintiffs are referring to. Vague, ambiguous, confusing, irrelevant, and overbroad as to
11 “BIRTH RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited
12 in time and scope and encompasses documentation and/or information that is not relevant
13 to the claims or defenses in this lawsuit and is therefore unduly burdensome and not
14 proportional to the needs of this case. Defendant objects to this Request to the extent it
15 seeks information concerning a “CHANGE” to the sex listed on “BIRTH RECORDS,” as
16 Plaintiffs’ definition of “CHANGE” is vague, confusing, irrelevant, overbroad, unduly
17 burdensome, and not proportional to the needs of the case in that it includes information
18 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
19 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
20 in this case. Defendant further objects to this Request as overbroad, unduly burdensome,
21 and irrelevant as to the timeframe from January 1, 2004 to the present, which
22 encompasses information that is not relevant to the claims or defenses in this lawsuit or
23 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
24 of allegations regarding conduct and/or events that occurred before approximately 2019
25 and none of the named minor Plaintiffs were born before 2011. Defendant objects to the
26 extent any documents responsive to this Request were destroyed pursuant to ADHS’s
27 three-year document retention policy. Defendant objects to the extent this Request seeks
28 information protected by the attorney-client privilege, the work product doctrine, the

1 deliberative process privilege, and/or any other applicable privilege. Defendant also
2 objects to this Request as it seeks production of ESI which can only be discovered through
3 an email or system search and where the parties have not *reached* an agreement on a
4 search protocol, including appropriate search terms and queries, file type and date
5 restrictions, data sources, and custodians.

6 Without waiving these objections, Defendant is not in possession of documents
7 responsive to this Request. ADHS/BVR do not have policies regarding the acceptance of
8 federal court orders to amend an individual's birth certificate under A.R.S. § 36-
9 337(A)(4). Pursuant to A.R.S. § 36-301(7), a "Court Order" is defined as "any written
10 decision issued by: (a) The superior court, an appellate court or the supreme court or an
11 equivalent court in another state [;] (b) A commissioner or judicial hearing officer of the
12 superior court [;] (c) A judge of a trial court in this state." *In addition, ADHS's policy*
13 *titled "Court Orders" applies only to the name change of a foreign-born parent of an*
14 *Arizona-born registrant. It does not apply to amending the sex/gender on an Arizona*
15 *birth certificate. Furthermore, federal court orders regarding parental name changes*
16 *are governed under federal immigration law, not state law.*

17 *The Department's acceptance of a federal court order to amend the sex/gender*
18 *field on former minor Plaintiff Jane Doe's birth certificate was made pursuant to a*
19 *settlement agreement entered into by the parties in this matter (Dkt. 39) and does not*
20 *reflect official ADHS policy regarding the acceptance of federal court orders.*

21 Defendant has not conducted a search of available ESI but will do so once the
22 parties have agreed to a search protocol.

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

24 DOCUMENTS sufficient to show the number of annual requests for a CHANGE to
25 the sex listed on a BIRTH RECORD, the basis of such requests, the number of approvals
26 of such requests, the number of denials of such requests, and the reasons for such
27 denials.

28

1 **RESPONSE:**

2 Objection: Vague and ambiguous as “sufficient to show,” and “basis of such
3 requests.” Vague, ambiguous, confusing, irrelevant, and overbroad as to “BIRTH
4 RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited in time
5 and scope and encompasses documentation and/or information that is not relevant to the
6 claims or defenses in this lawsuit and is therefore unduly burdensome and not
7 proportional to the needs of this case. Defendant objects to this Request to the extent it
8 seeks information concerning a “CHANGE” to the sex listed on “BIRTH RECORDS,” as
9 Plaintiffs’ definition of “CHANGE” is vague, confusing, irrelevant, overbroad, unduly
10 burdensome, and not proportional to the needs of the case in that it includes information
11 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
12 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
13 in this case. Defendant further objects to this Request as overbroad, unduly burdensome,
14 and irrelevant as to the timeframe from January 1, 2004 to the present, which
15 encompasses information that is not relevant to the claims or defenses in this lawsuit or
16 proportional to the needs of this case given that Plaintiffs’ Amended Complaint is devoid
17 of allegations regarding conduct and/or events that occurred before approximately 2019
18 and none of the named minor Plaintiffs were born before 2011. Defendant objects to the
19 extent any documents responsive to this Request were destroyed pursuant to ADHS’s
20 three-year document retention policy. Defendant objects to the extent this Request seeks
21 information protected by the attorney-client privilege, the work product doctrine, the
22 deliberative process privilege, and/or any other applicable privilege. Defendant also
23 objects to this Request as it seeks the production of ESI which can only be discovered
24 through an email or system search and where the parties have not conferred or attempted
25 to reach an agreement on a search protocol, including appropriate search terms and
26 queries, file type and date restrictions, data sources, and custodians.

27 Without waiving these objections, Defendant is not in possession of any documents
28 responsive to this Request because ADHS does not maintain records and data in a way

1 that captures the total number of requests to amend and their approval/denial. Providing a
2 response would require ADHS to search for and produce records for every registered birth
3 in the State of Arizona, which is unduly burdensome and would require disclosure of
4 records that are confidential and have no relevance to the claims asserted in Plaintiffs’
5 Amended Complaint. Defendant has not conducted a search of available ESI but will do
6 so once the parties have agreed to a search protocol. Defendant will meet and confer with
7 Plaintiffs to determine an appropriate alternative.

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

9 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported
10 governmental interest(s) or other justification(s) under the Equal Protection Clause of the
11 Fourteenth Amendment of the United States Constitution for denying transgender
12 individuals who have not undergone a “sex change operation” the ability to CHANGE the
13 sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona Revised Statute
14 section 36-337.

15 **RESPONSE:**

16 Objection: Vague, ambiguous, and overbroad as to “purported governmental
17 interest(s)” and “other justification(s)” as these terms are not reasonably limited in scope
18 or meaning. This Request is vague, ambiguous, confusing, irrelevant, and overbroad as to
19 “BIRTH RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited
20 in time and scope and encompasses documentation and/or information that is not relevant
21 to the claims or defenses in this lawsuit and is therefore unduly burdensome and not
22 proportional to the needs of this case. Defendant also objects to this Request to the extent
23 it seeks information concerning a “CHANGE,” as Plaintiffs’ definition of “CHANGE” is
24 vague, confusing, irrelevant, and overbroad, and includes information related to
25 “corrections” to registered birth certificates defined in A.R.S. § 36-301(6), which are not
26 “amendments” governed by A.R.S. § 36-337 and are therefore not at issue in this case.
27 Defendant also objects to this Request as overbroad, unduly burdensome, and irrelevant as
28 to the timeframe from January 1, 2004 to the present, which encompasses information that

1 is not relevant to the claims or defenses in this lawsuit or proportional to the needs of this
2 case given that Plaintiffs' Amended Complaint is devoid of allegations regarding conduct
3 and/or events that occurred before approximately 2019 and none for the named minor
4 Plaintiffs were born before 2011. Defendant objects to the extent this Request seeks
5 information protected by the attorney-client privilege, the work product doctrine, the
6 deliberative process privilege, and/or any other applicable privilege. Defendant further
7 objects to the Request as it seeks production of ESI which can only be discovered through
8 an email or system search and where the parties have not conferred or attempted to reach
9 an agreement on a search protocol, including appropriate search terms and queries, file
10 type and date restrictions, data sources, and custodians.

11 Moreover, a response to this Request requires an assumption that Plaintiffs' equal
12 protection rights have been violated when they have not. In addition, Defendant denies
13 that transgender individuals who have not undergone a "sex change operation" are
14 prevented, excluded, or otherwise barred from amending the sex marker listed on their
15 registered birth certificates. All transgender individuals in the State of Arizona have the
16 opportunity to amend the sex listed on their registered birth certificates by seeking a court
17 order pursuant to A.R.S. § 36-337(A)(4).

18 Finally, this Request seeks documentation and/or information regarding legislative
19 intent, and the creation, construction, and adoption of relevant Arizona statutes, as
20 "governmental interest" and/or "other justification" could only have been considered by
21 the Arizona Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The
22 creation, construction, and adoption of Arizona statutes is not a function of ADHS, and
23 neither ADHS, nor Defendant, were involved in or have ever been involved in this
24 process. Accordingly, this Request is more appropriately suited for the Arizona
25 Legislature and cannot be answered by Defendant. No response is being provided.
26 ***Defendant will consider supplementing this response should Plaintiffs rephrase this***
27 ***Request so that it does not seek information regarding a legal conclusion.***
28

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

2 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported
3 governmental interest(s) or other justification(s) under the Substantive Due Process Right
4 to Privacy of the Fourteenth Amendment of the United States Constitution for denying
5 transgender individuals who have not undergone a “sex change operation” the ability to
6 CHANGE the sex listed on their BIRTH RECORDS under subsection (A)(3) of Arizona
7 Revised Statute section 36-337.

8 **RESPONSE:**

9 Objection: Vague, ambiguous, and overbroad as to “purported governmental
10 interest(s)” and “other justification(s)” as these terms are not reasonably limited in scope
11 or meaning. This Request is vague, ambiguous, confusing, irrelevant, and overbroad as to
12 “BIRTH RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited
13 in time and scope and encompasses documentation and/or information that is not relevant
14 to the claims or defenses in this lawsuit and is therefore unduly burdensome and not
15 proportional to the needs of this case. Defendant also objects to this Request to the extent
16 it seeks any and all information concerning a “CHANGE,” as Plaintiffs’ definition of
17 “CHANGE” is vague, confusing, irrelevant, and overbroad, and includes information
18 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
19 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
20 in this case. Defendant also objects to this Request as overbroad, unduly burdensome, and
21 irrelevant as to the timeframe from January 1, 2004 to the present, which encompasses
22 information that is not relevant to the claims or defenses in this lawsuit or proportional to
23 the needs of this case given that Plaintiffs’ Amended Complaint is devoid of allegations
24 regarding conduct and/or events that occurred before approximately 2019 and none for the
25 named minor Plaintiffs were born before 2011. Defendant objects to the extent this
26 Request seeks information protected by the attorney-client privilege, the work product
27 doctrine, the deliberative process privilege, and/or any other applicable privilege.
28 Defendant further objects to the Request as it seeks production of ESI which can only be

1 discovered through an email or system search and where the parties have not conferred or
2 attempted to reach an agreement on a search protocol, including appropriate search terms
3 and queries, file type and date restrictions, data sources, and custodians.

4 Moreover, Plaintiffs do not have a recognized substantive due process right under
5 the Fourteenth Amendment of the United States Constitution to amend their birth
6 certificates free of administrative or judicial processes and answering this Request
7 requires an assumption that Plaintiffs' substantive due process rights have been violated
8 when they have not. In addition, Defendant denies that transgender individuals who have
9 not undergone a "sex change operation" are prevented, excluded, or otherwise barred from
10 amending the sex marker listed on their registered birth certificates. All transgender
11 individuals in the State of Arizona have the opportunity to amend the sex listed on their
12 registered birth certificates by seeking a court order pursuant to A.R.S. § 36-337(A)(4).

13 Finally, this Request seeks documentation and/or information regarding legislative
14 intent, and the creation, construction, and adoption of relevant Arizona statutes, as a
15 "governmental interest" and/or "other justification" could only have been considered by
16 the Arizona Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The
17 creation, construction, and adoption of Arizona statutes is not a function of ADHS, and
18 neither ADHS, nor Defendant, were involved in or have ever been involved in this
19 process. Accordingly, this Request is more appropriately suited for the Arizona
20 Legislature and cannot be answered by Defendant. No response is being provided.

21 *Defendant will consider supplementing this response should Plaintiffs rephrase this*
22 *Request so that it does not seek information regarding a legal conclusion.*

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

24 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported
25 governmental interest(s) or other justification(s) under the Substantive Due Process Right
26 to Individual Liberty and Autonomy of the Fourteenth Amendment of the United States
27 Constitution for denying transgender individuals who have not undergone a "sex change
28 operation" the ability to CHANGE the sex listed on their BIRTH RECORDS under

1 subsection (A)(3) of Arizona Revised Statute section 36-337.

2 **RESPONSE:**

3 Objection: Vague, ambiguous, and overbroad as to “purported governmental
4 interest(s)” and “other justification(s)” as these terms are not reasonably limited in scope
5 or meaning. This Request is vague, ambiguous, confusing, irrelevant, and overbroad as to
6 “BIRTH RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited
7 in time and scope and encompasses documentation and/or information that is not relevant
8 to the claims or defenses in this lawsuit and is therefore unduly burdensome and not
9 proportional to the needs of this case. Defendant also objects to this Request to the extent
10 it seeks information concerning a “CHANGE,” as Plaintiffs’ definition of “CHANGE” is
11 vague, confusing, irrelevant, and overbroad, and includes information related to
12 “corrections” to registered birth certificates defined in A.R.S. § 36-301(6), which are not
13 “amendments” governed by A.R.S. § 36-337 and are therefore not at issue in this case.
14 Defendant objects to this Request as overbroad, unduly burdensome, and irrelevant as to
15 the timeframe from January 1, 2004 to the present, which encompasses information that is
16 not relevant to the claims or defenses in this lawsuit or proportional to the needs of this
17 case given that Plaintiffs’ Amended Complaint is devoid of allegations regarding conduct
18 and/or events that occurred before approximately 2019 and none of the named minor
19 Plaintiffs were born before 2011. Defendant objects to the extent this Request seeks
20 information protected by the attorney-client privilege, the work product doctrine, the
21 deliberative process privilege, and/or any other applicable privilege. Defendant further
22 objects to the Request as it seeks production of ESI which can only be discovered through
23 an email or system search and where the parties have not conferred or attempted to reach
24 an agreement on a search protocol, including appropriate search terms and queries, file
25 type and date restrictions, data sources, and custodians.

26 Moreover, Plaintiffs do not have a recognized substantive due process right under
27 the Fourteenth Amendment of the United States Constitution to amend their birth
28 certificates free of administrative or judicial processes and answering this Request

1 requires an assumption that Plaintiffs’ substantive due process rights have been violated
2 when they have not. In addition, Defendant denies that transgender individuals who have
3 not undergone a “sex change operation” are prevented, excluded, or otherwise barred from
4 amending the sex marker listed on their registered birth certificates. All transgender
5 individuals in the State of Arizona have the opportunity to amend the sex listed on their
6 registered birth certificates by seeking a court order pursuant to A.R.S. § 36-337(A)(4).

7 Finally, this Request seeks information regarding legislative intent, and the
8 creation, construction, and adoption of relevant Arizona statutes, as a “governmental
9 interest” and/or “other justification” could only have been considered by the Arizona
10 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,
11 construction, and adoption of Arizona statutes is not a function of ADHS, and neither
12 ADHS, nor Defendant, were involved in or have ever been involved in this process.
13 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature
14 and cannot be answered by Defendant. No response is being provided. *Defendant will*
15 *consider supplementing this response should Plaintiffs rephrase this Request so that it*
16 *does not seek information regarding a legal conclusion.*

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

18 All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR purported
19 governmental interest(s) or other justification(s) under the Substantive Due Process Right
20 to choose whether to undergo a particular medical treatment of the Fourteenth
21 Amendment of the United States Constitution for denying transgender individuals who
22 have not undergone a “sex change operation” the ability to CHANGE the sex listed on
23 their BIRTH RECORDS under subsection (A)(3) of Arizona Revised Statute section 36-
24 337.

25 **RESPONSE:**

26 Objection: Vague, ambiguous, and overbroad as to “purported governmental
27 interest(s)” and “other justification(s)” as these terms are not reasonably limited in scope
28 or meaning. This Request is vague, ambiguous, confusing, irrelevant, and overbroad as to

1 “BIRTH RECORD,” as Plaintiffs’ definition of “BIRTH RECORD” is virtually unlimited
2 in time and scope and encompasses documentation and/or information that is not relevant
3 to the claims or defenses in this lawsuit and is therefore unduly burdensome and not
4 proportional to the needs of this case. Defendant also objects to this Request to the extent
5 it seeks any and all policies concerning a “CHANGE,” as Plaintiffs’ definition of
6 “CHANGE” is vague, confusing, irrelevant, and overbroad, and includes information
7 related to “corrections” to registered birth certificates defined in A.R.S. § 36-301(6),
8 which are not “amendments” governed by A.R.S. § 36-337 and are therefore not at issue
9 in this case. Defendant also objects to this Request as overbroad, unduly burdensome, and
10 irrelevant as to the timeframe from January 1, 2004 to the present, which encompasses
11 information that is not relevant to the claims or defenses in this lawsuit or proportional to
12 the needs of this case given that Plaintiffs’ Amended Complaint is devoid of allegations
13 regarding conduct and/or events that occurred before approximately 2019 and none for the
14 named minor Plaintiffs were born before 2011. Defendant objects to the extent this
15 Request seeks information protected by the attorney-client privilege, the work product
16 doctrine, and/or any other applicable privilege. Defendant further objects to the Request
17 as it seeks production of ESI which can only be discovered through an email or system
18 search and where the parties have not conferred or attempted to reach an agreement on a
19 search protocol, including appropriate search terms and queries, file type and date
20 restrictions, data sources, and custodians.

21 Moreover, Plaintiffs do not have a recognized substantive due process right under
22 the Fourteenth Amendment of the United States Constitution to amend their birth
23 certificates free of administrative or judicial processes, nor do they have a substantive due
24 process right to “choose whether to undergo a particular medical treatment.” Thus,
25 answering this interrogatory requires an assumption that Plaintiffs’ substantive due
26 process rights have been violated when they have not. In addition, Defendant denies that
27 transgender individuals who have not undergone a “sex change operation” are prevented,
28 excluded, or otherwise barred from amending the sex marker listed on their registered

1 birth certificates. All transgender individuals in the State of Arizona have the opportunity
2 to amend the sex listed on their registered birth certificates by seeking a court order
3 pursuant to A.R.S. § 36-337(A)(4).

4 Finally, this Request seeks information regarding legislative intent, and the
5 creation, construction, and adoption of relevant Arizona statutes. A “governmental
6 interest” and/or “other justification” could only have been considered by the Arizona
7 Legislature prior to the adoption of or any revision to A.R.S. § 36-337. The creation,
8 construction, and adoption of Arizona statutes is not a function of ADHS, and neither
9 ADHS, nor Defendant, were involved in or have ever been involved in this process.
10 Accordingly, this interrogatory is more appropriately suited for the Arizona Legislature
11 and cannot be answered by Defendant. No response is being provided. *Defendant will*
12 *consider supplementing this response should Plaintiffs rephrase this Request so that it*
13 *does not seek information regarding a legal conclusion.*

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

15 All DOCUMENTS and COMMUNICATIONS CONCERNING any ADHS and/or
16 BVR POLICY CONCERNING privacy or confidentiality protections for information
17 CONCERNING a PERSON’S gender identity or transgender status.

18 **RESPONSE:**

19 Objection: Vague and ambiguous as to “privacy,” “confidentiality,” “gender
20 identity,” and “transgender status.” Overbroad, unduly burdensome, and irrelevant
21 because “gender identity” and “transgender status” are not fields on an Arizona birth
22 certificate, nor are they terms that are defined in any applicable Arizona Statute or
23 administrative rule governing BVR/ADHS. Defendant also objects that this Request is
24 overbroad, unduly burdensome, and irrelevant as to the time period from January 1, 2004
25 to the present, which encompasses information that is not relevant to the claims or
26 defenses in this lawsuit or proportional to the needs of this case given that Plaintiffs’
27 Amended Complaint is devoid of allegations regarding conduct and/or events that
28 occurred before approximately 2019, and none of the named minor Plaintiffs were born

1 prior to 2011. Defendant objects to the extent any documents responsive to this Request
2 were destroyed pursuant to ADHS's three-year document retention policy. Defendant
3 further objects that information responsive this interrogatory, if any, is irrelevant to the
4 claims or defenses in this case. Defendant objects to the extent this Request seeks
5 information protected by the attorney-client privilege, the work product doctrine, and/or
6 any other applicable privilege. Defendant further objects to the Request as it seeks
7 production of ESI which can only be discovered through an email or system search and
8 where the parties have not conferred or attempted to reach an agreement on a search
9 protocol, including appropriate search terms and queries, file type and date restrictions,
10 data sources, and custodians.

11 Without waiving these objections, *Defendant is required to comply with A.R.S. §*
12 *36-322 regarding sealing an individuals' original registered birth certificate after an*
13 *amendment. See Defendant's response to Interrogatory No. 17.* Defendant is not in
14 possession of any documents responsive to this Request but will supplement this response
15 with any documents that might exist. Defendant has not conducted a search of available
16 ESI but will do so once the parties have agreed to a search protocol.

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

18 All DOCUMENTS and COMMUNICATIONS reviewed, considered or relied
19 upon by any expert witness retained by Defendant who provided or will provide an
20 opinion on Defendant's behalf in connection with this ACTION.

21 **RESPONSE:**

22 There are no documents responsive to this request because Defendant has not
23 retained an expert witness. Defendant will supplement this response subject to any and all
24 applicable objections if an expert witness is retained.

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

26 All DOCUMENTS and COMMUNICATIONS CONCERNING compensation for
27 any expert witness retained by Defendant who provided or will provide an opinion on
28 Defendant's behalf in connection with this ACTION.

1 **RESPONSE:**

2 There are no documents responsive to this request because Defendant has not
3 retained an expert witness. Defendant will supplement this response subject to any and all
4 applicable objections if an expert witness is retained.

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

6 All DOCUMENTS and COMMUNICATIONS CONCERNING facts and
7 assumptions that Defendants' attorneys provided to any expert witness retained now or in
8 the future by Defendant and which that expert relied on in forming the expert's opinions.

9 **RESPONSE:**

10 Defendant objects to this Request as it improperly assumes that counsel for
11 Defendant will provide any retained expert witness with "facts and assumptions" about
12 this case. This Request also seeks information that is protected by the attorney-client
13 privilege and work-product doctrine. There are no documents responsive to this request.

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

15 All DOCUMENTS and COMMUNICATIONS used to prepare or educate a
16 witness providing a declaration, testimony, or opinion on Defendant's behalf in
17 connection with this ACTION.

18 **RESPONSE:**

19 There are no documents responsive to this Request because Defendant has not
20 "prepared" or "educated" any witness in connection with this action. This Request also
21 seeks information that is protected by the attorney-client privilege and work-product
22 doctrine. Defendant reserves the right to supplement this response subject to any and all
23 applicable objections.

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

25 All DOCUMENTS and COMMUNICATIONS that Defendant referenced, relied
26 upon, or identified in Defendant's Fed. R. Civ. P. Rule 26(a) initial disclosures.

27 **RESPONSE:**

28 Objection: Vague, ambiguous, overbroad, unduly burdensome, and not

1 proportional to the needs of this case, as “all DOCUMENTS and COMMUNICATIONS”
2 Defendant “referenced, relied upon, or identified” in Defendant’s Initial Disclosure
3 Statement is not reasonably limited in time or scope. This Request also seeks information
4 that is protected by the attorney-client privilege and the work-product doctrine.

5 Without waiving these objections, Defendant is not in possession of any documents
6 responsive to this Request aside from what has already been produced by all parties.

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

8 All DOCUMENTS and COMMUNICATIONS CONCERNING that Defendant
9 relied upon, referenced in, or identified in answering Plaintiffs’ interrogatories.

10 **RESPONSE:**

11 Objection: Vague, ambiguous, overbroad, unduly burdensome, and not
12 proportional to the needs of this case, as “all DOCUMENTS and COMMUNICATIONS”
13 Defendant “relied upon, referenced in, or identified in answering Plaintiffs’
14 interrogatories” is not reasonably limited in time or scope. This Request also seeks
15 information that is protected by the attorney-client privilege and the work-product
16 doctrine.

17 Without waiving these objections, Defendant is not in possession of any documents
18 responsive to this Request aside from what has already been produced by all parties.

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

20 All non-privileged DOCUMENTS and COMMUNICATIONS CONCERNING the
21 ACTION.

22 **RESPONSE:**

23 Objection: Vague, ambiguous, overbroad, unduly burdensome, and not
24 proportional to the needs of this case, as “all” non-privileged documents and
25 communications concerning this action is not reasonably limited in time or scope. This
26 Request also seeks information that is protected by the attorney-client privilege and work-
27 product doctrine.

28 Without waiving these objections, Defendant is not in possession of any documents

1 responsive to this Request aside from what has already been produced by all parties.

2
3 DATED this 28th day of February 2022.

4 STRUCK LOVE BOJANOWSKI & ACEDO, PLC

5
6 By *Dana Keene*
7 Daniel P. Struck
8 Nicholas D. Acedo
9 Dana M. Keene
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11 Chandler, Arizona 85226

12 MARK BRNOVICH
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17 Phoenix, AZ 85007

18 *Attorneys for Defendant*

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27
28

1 The foregoing was emailed this 28th day
2 of February 2022 to:

3 Mary O'Grady (011434)
4 Colin Proksel (034133)
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17 Patrick Gunn (admitted Pro Hac Vice)
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19 101 California Street, 5th Floor
20 San Francisco, California 94111-5800
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24 4401 Eastgate Mall
25 San Diego, California 92121-1909
26 Email: banderson@cooley.com

27 *Attorneys for Plaintiffs and Proposed Class*

28 

EXHIBIT 5

From: [Toni Miller](#) on behalf of [Toni Miller <toni.miller@azdhs.gov>](#)
To: [Luana Pallanes](#)
Cc: [Robin Rodriguez](#); [Richard McKenney](#); [Marcellina Lopez](#); [Julia Mora](#); [Bianca Soto](#); [John Jimenez](#); [Holly Baker](#)
Bcc: [krystal.colburn@azdhs.gov](#)
Subject: Response to Court Order Policy Questions
Date: Wednesday, September 5, 2018 3:30:04 PM

Hi Luana,

Thank you for the opportunity to respond to your inquiries. The purpose of this e-mail is to follow up on our discussion by phone today and capture the responses provided in writing.

1. Page 3, 1c-Reviewing Court Orders. Question: What if the CO reads change **from** Nancy Wright **to** Nancy Jo Smith but in EBRS, the record reads Nancy Jo Wright. Can we make the change? At one point we were told if the name listed “**from**” does not need to be exact but if name listed “**to**” we need to change it according to what it reads exactly. Does this apply still?

BVR Response: This requires use of critical thinking skills here. As long as the first and last name match, the date of birth match and if there is other information provided in the court order, affidavit, etc. that match the birth record then the order can be used to amend the birth record. The birth record should be amended as directed in the court order.

2. Page 10, 7-just to be clear, if it states on a divorce decree that the husband is the father and in EBRS his name is not listed, we can add his name on the birth certificate? Affidavit to Correct plus a certified divorce decree.

BVR Response: Yes.

3. Page 11, 10 Termination of Parental Rights-does it have to say exactly “states BVR shall remove the father/mother from the birth record” or can it also read “terminate parental rights and remove father/mother from the birth record”?

BVR Response: Yes, either is acceptable.

4. Should you add Court Order Sex change on this list to refer to BVR? Most orders that we see are changing the name and the sex, do we refer is scenario to BVR?

*BVR Response: No, the sex changes would not be added to the court order policy. A court order is not required to amend the sex of the registrant according Arizona Administrative Code R9-19-208(O). **Yes, changes to the registrant’s gender involving a sex change operation or change in chromosomal count should be referred to the Bureau of Vital Records until further notice.***

Note: If there was a data entry error involving the registrant’s gender, a correction letter from the hospital along with the worksheet or medical record from the hospital (if applicable) can be used to correct the gender. If the hospital record cannot be obtained or it was not a hospital birth, the affidavit along with a letter from their family physician (on the

physician's letterhead) stating the person was born a male/female is acceptable to amend the gender in this case. If you have any questions regarding these scenarios, please contact the BVR Registry team.

Please let me know if I can assist your further.

Have a great afternoon!

--

Toni Miller

Policy Manager & Community Partner Liaison

Arizona Department of Health Services

Bureau of Vital Records

1818 W. Adams, Phoenix, Arizona 85007

Phone: 602-364-1737

e-mail: Toni.Miller@azdhs.gov

Health and Wellness for all Arizonans

EXHIBIT 6

Exhibit A

Proposed Custodians:

1. Don Herrington
2. Krystal Colburn
3. Cara Christ
4. Colby Bower
5. Thomas Salow
6. Nicole Heath
7. Bianca Soto
8. Toni Miller
9. Robert Lane
10. Katina Lugo
11. Ruthann Smejkal
12. Robin Rodriguez
13. Marcellina Lopez
14. Luis Valdez-Ramos
15. Julia Mora
16. Will Humble
17. Cory Nelson
18. Patricia Adams
19. Valerie Grina
20. Khaleel Hussaini
21. Jeffrey Bloomberg
22. Kathleen Phillips
23. Donald Schmid

Proposed Search Terms:

- “36-337(A)(3)” or “(A)(3)”
- “36-337(A)(4)” or “(A)(4)”
- “R9-19-208(O)”
- “R9-19-208(P)”
- “sex change”
- “chromosomal count”
- “transgender”
- “transsexual”
- “intersex” or “DSD”
- “gender dysphoria”
- “gender identity” or “GID”
- “sex” or “gender marker”
- “surgical” or “surgery” or “operation”
- “gender reassignment” or “sex reassignment” or “sexual reassignment” or “SRS”
- “gender conforming” or “gender confirming” or “gender confirmation” or “GCS”
- “gender affirming” or “gender affirmation”

Proposed Time Period:

All emails sent or received and all documents created on or after January 1, 2017.