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Redwood City, CA 94062
Tel: (650) 278-2957

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

**KELSEY CASCADIA ROSE JULIANA;
XIUHTEZCATL TONATIUH M.**, through
his Guardian Tamara Roske-Martinez; et al.,

Plaintiffs,

v.

The UNITED STATES OF AMERICA; et
al.

Defendants.

Case No.: 6:15-cv-01517-AA

DECLARATION OF JULIA A. OLSON in
Support of Plaintiffs' Response in Opposition to
Defendants' Motion to Strike Plaintiffs' Trial
Exhibit List

**DECLARATION OF JULIA A. OLSON IN SUPPORT OF PLAINTIFFS' RESPONSE
IN OPP. TO DEFENDANTS' MOT. TO STRIKE**

I, Julia A. Olson, hereby declare and if called upon would testify as follows:

1. I am an attorney of record in the above-entitled action. I make this Declaration in support of Plaintiffs' Response in Opposition to Defendants' Motion to Strike Plaintiffs' Exhibit List. I have personal knowledge of the facts stated herein, except as to those stated upon information and belief, and if called to testify, I would and could testify competently thereto.
2. Following a telephonic status conference before Judge Aiken, the Court ordered both parties to exchange exhibit lists on October 1, 2018 and to file these lists with the Court on October 15, 2018. Doc. 343. In response to Defendants' request to amend the pretrial schedule, a request that the Plaintiffs' opposed, the Court extended the deadline to exchange exhibit lists to October 12, 2018 and the deadline to file exhibit lists and objections to October 19, 2018. Doc. 356.
3. At a September 20, 2018 meet and confer, in response to my inquiry about what we should expect on Defendants' exhibit list, counsel for Defendants stated that they anticipated that most of their exhibits would be documents they used as exhibits at the depositions and perhaps "a few other government documents" such as Congressional records. Counsel Sean Duffy specifically stated that he believed approximately 70 exhibits would be the number of exhibits he would anticipate having for trial.
4. On October 12, 2018, for the first time, Plaintiffs were made aware of Defendants' intention to file a Motion *in Limine* seeking judicial notice of close to 450 documents (all congressional testimony) and Defendants provided Plaintiffs with a spreadsheet listing those documents. **Exhibit 1**. None of these documents were identified or produced in response to Plaintiffs' discovery requests. Defendants listed these documents on the

exhibit list they exchanged with Plaintiffs on October 12, 2018. Defendants also included other documents previously undisclosed to Plaintiffs on their exhibit list.

5. Defendants did not provide Plaintiffs with hyperlinks or copies of any of the documents listed on their Exhibit List, instead telling Plaintiffs that all documents should be easily accessible online. **Exhibit 2.** Despite Defendants' assurances that Plaintiffs could locate these documents online, and after spending several hours trying to locate Defendants' exhibits, Plaintiffs could not locate at least 100 of these documents online and requested that these documents be provided immediately. **Exhibit 3.** Plaintiffs did not receive copies of the 450 Congressional hearing documents until October 16, 2018. After multiple requests to Defendants to provide copies of the remaining documents, Plaintiffs finally received copies of all exhibits on Defendants' exhibit list on October 18, 2018, the day before exhibit lists and objections were to be filed with the Court. **See Exhibit 4.**
6. Many of the documents identified in Defendants' Motion *in Limine* Seeking Judicial Notice and on their exhibit list were responsive to, but not produced in response to, Plaintiffs' Contention Interrogatories. Plaintiffs first served Contention Interrogatories on August 17, 2018. After Plaintiffs' granted a 3-week extension, Defendants provided partial responses on September 28, 2018 and amended responses on October 7, 2018. Neither of these responses included any of the new documents that appear on Defendants' Motion *in Limine* Seeking Judicial Notice and exhibit list. Doc. 388 (Plaintiffs' Motion to Compel Responses to Interrogatories).
7. On October 12, 2018, Plaintiffs served Defendants with their exhibit list. On October 18, 2018, Plaintiffs sent an updated exhibit list to Defendants containing 1,902 exhibits. In transmitting the October 18 version of the exhibit list, Plaintiffs provided Defendants

with summaries of any changes made to the list since October 12. For purposes of their exhibit list, Plaintiffs narrowed their body of documents, including documents filed in Motions *in Limine* and materials submitted with expert reports and used as exhibits at expert depositions, to only those documents they reasonably believe will be used at trial and useful to the Court.

8. Plaintiffs included on their exhibit list many of the documents previously submitted to this Court in Plaintiffs' three Motions *in Limine* Seeking Judicial Notice of Publicly Available Documents, filed June 28, 2018, August 24, 2018, and October 15, 2018. During each of these Motions *in Limine*, Plaintiffs worked with Defendants to resolve objections by providing electronic copies of all documents, additional source information, and replacement documents when needed. Defendants took "no position" or lodged objections on a number of exhibits throughout this process, but had "no objection" to the vast majority of documents filed with each Motion *in Limine*.
9. On September 7, 2018, the day that Defendants' response to Plaintiffs' second Motion *in Limine* was due, Defendants moved for an extension of three additional weeks, which, according to Defendants, would "provide Defendants with sufficient time to review all 609 documents." Doc. 346. The Court granted Defendants an extension to respond to Plaintiffs' second Motion *in Limine* by October 4, 2018. On September 28, 2018, Defendants filed their response to Plaintiffs' second Motion *in Limine*, lodging objections to only two exhibits and taking either "no position" or "no objection" on the remaining exhibits. Doc. 357, 366.
10. For the third Motion *in Limine*, Plaintiffs first exchanged the exhibits filed with Defendants on September 28, 2018, prior to filing the Motion *in Limine*, in an attempt to

resolve authenticity disputes and to avoid the need for extensive briefing. **Exhibit 5.**

After receiving all of Defendants' positions on the documents on October 12, 2018, Plaintiffs filed their third Motion *in Limine* on October 15, 2018, the deadline set by the Court for all Motions *in Limine*. Doc. 343. Plaintiffs included Defendants' responses to each document in their Motion and indicated any new additions or changes to the list that had occurred since providing the list to Defendants. *See* Doc. 380. Defendants did not object to most of these documents.

11. Plaintiffs filed these Motions *in Limine* as a compromise to resolve Defendants' objections to Plaintiffs' Requests for Admissions, served in January, May, and June of 2018. Plaintiffs also included documents to account for the testimony that would normally be obtained through 30(b)(6) depositions, which Plaintiffs noticed in May 2018 but Defendants opposed and told Plaintiffs could be replaced by contention interrogatories. *See Exhibit 6.* Plaintiffs also sought judicial notice of some publicly available references to Plaintiffs' experts' reports in these Motions *in Limine*.
12. Despite Plaintiffs' attempt to jointly prepare a pretrial order with Defendants incorporating direct quotes from documents filed with Plaintiffs' Motions *in Limine*, Defendants have not agreed to any facts beyond those admitted in their Answer filed on January 13, 2017. As a result, Plaintiffs must introduce a large number and wide variety of documents at trial to support their claims.
13. Plaintiffs included on their exhibit list all records produced by Plaintiffs in response to Defendants' July 25, 2018 subpoena. In a July 27, 2018 letter, Defendants explained that they sought "medical and/or personal documents" as well as documents related to allegations "that Defendants caused Plaintiffs' injuries" to support each allegation in the

complaint and Plaintiffs' declarations. **Exhibit 7.** Counsel for Plaintiffs produced responsive documents to Defendants as they became available to them from individual Plaintiffs. Most of these records were served on Defendants in August 2018, and a small subset of Plaintiffs' records was produced in early October.

14. On their exhibit list, Plaintiffs included expert reports and some of the associated exhibits and references. Defendants first received initial versions of many of these expert reports, including the associated exhibits and cited references, in July and August of 2017. Plaintiffs served Defendants with updated versions of these reports and additional expert reports in April 2018. One expert report, that of James Gustave Speth, was served in August 2018. Plaintiffs served expert rebuttal reports in September 2018. Prior to expert's depositions in August and September 2018, in accordance with text in each expert report reserving the right to supplement based upon newly discovered information, Plaintiffs' supplemented some of their expert reports with additional references and/or minor edits in advance of the expert's deposition.
15. Plaintiffs included documents used as exhibits at depositions of Defendants' experts on their exhibit list, which all occurred in August and September 2018.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of November, 2018.

Respectfully submitted,

s/ Julia A. Olson
Julia A. Olson

Exhibit 1

From: **Boronow, Clare (ENRD)** <Clare.Boronow@usdoj.gov>
Date: Fri, Oct 12, 2018 at 11:07 AM
Subject: Conferral: Juliana v. United States, Motion for judicial notice
To: Julia Olson <juliaaolson@gmail.com>, Andrea Rodgers <andrearodgers42@gmail.com>, Phil Gregory <pgregory@gregorylawgroup.com>
Cc: Duffy, Sean C. (ENRD) <Sean.C.Duffy@usdoj.gov>, Norman, Erika (ENRD) <Erika.Norman@usdoj.gov>, Piropato, Marissa (ENRD) <Marissa.Piropato@usdoj.gov>, Singer, Frank (ENRD) <Frank.Singer@usdoj.gov>

Julia, Andrea, Phil,

We are planning to file a motion seeking judicial notice of 450 Congressional hearing reports on Monday. The motion will seek notice of the existence and authenticity of the reports only, not the truth of any of the statements asserted in the reports. The reports are all official publications of the US Congress. To allow you to better assess the motion and determine your position, I am attaching a spreadsheet of the 450 hearing reports. Please note that the spreadsheet is a draft—although we do not intend to add any additional hearing reports, we are currently proofing the spreadsheet to ensure everything is accurate.

In addition, we plan to file a motion to seek leave to file the 450 reports manually on a flash drive. We would also send a flash drive containing the reports to you via overnight mail. We have had issues in the past uploading numerous large files to CM/ECF and, as you know, have been unable to access the judicial notice documents that you have filed on CM/ECF. Since the reports total about 80,000 pages, we see manual filing as a way to avoid problems on CM/ECF and provide everyone with immediate access to the hearing reports.

Please let me know Plaintiffs' position on each of these motions. I am happy to answer any questions about either motion.

Thank you,
Clare

Clare Boronow
Trial Attorney, Natural Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
(303) 844-1362
clare.boronow@usdoj.gov

Exhibit 2

From: "Norman, Erika (ENRD)" <Erika.Norman@usdoj.gov>

Date: October 15, 2018 at 9:00:06 AM PDT

To: Philip Gregory <pgregory@gregorylawgroup.com>, Andrea Rodgers <andrearodgers42@gmail.com>, Julia Olson <juliaaolson@gmail.com>

Cc: "Singer, Frank (ENRD)" <Frank.Singer@usdoj.gov>, "Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>, "Duffy, Sean C. (ENRD)" <Sean.C.Duffy@usdoj.gov>, "Boronow, Clare (ENRD)" <Clare.Boronow@usdoj.gov>

Subject: RE: Exhibit List

Phil,

Our understanding is that all (or virtually all) of the documents listed on Defendants' exhibit list are in your possession already or are publicly available on the internet. The first ~460 exhibits on the list are deposition transcripts/exhibits and documents Plaintiffs produced to Defendants (e.g., medical records). The last ~450 documents are Congressional documents we are sending to you on the USB stick. The documents in between are publicly available agency documents. However, if you are unable to locate any specific documents online using the document description please let us know and we will provide them.

"Def. Fact DOE," etc. reflects who we anticipate may authenticate the document if introduced at trial and is not intended as a final commitment or intention. "Def. Fact DOE" stands for Defendant fact witness Department of Energy.

Erika

Exhibit 3

From: **Andrea Rodgers** <andrearodgers42@gmail.com>
Date: Wed, Oct 17, 2018 at 11:13 AM
Subject: Juliana v. United States, Defendants' Exhibits
To: Singer, Frank (ENRD) <frank.singer@usdoj.gov>, Piropato, Marissa (ENRD) <Marissa.piropato@usdoj.gov>, Duffy, Sean C. (ENRD) <sean.c.duffy@usdoj.gov>, Norman, Erika (ENRD) <Erika.Norman@usdoj.gov>, Boronow, Clare (ENRD) <clare.boronow@usdoj.gov>
Cc: Julia Olson <juliaaolson@gmail.com>, Philip Gregory <pgregory@gregorylawgroup.com>

Counsel-

Contrary to your assurances that the exhibits you have identified on your exhibit list are publicly available, we have been unable to locate or access a number of your exhibits. After our initial review, below are the exhibits that cannot be located. We ask that you provide us with electronic copies of all of these exhibits by close of business today.

Thank you,
Andrea

Exhibit 469: Transportation Statistics Annual Report Chapter 7 Transportation Energy Use and Environmental Impacts

Exhibit 472: Climate Change and Transportation Infographic.

Exhibit 473: FHWA Alternative Fuel Corridors Summary

Exhibits 477-483 : Impacts of Climate Change and Variability on Transportation Systems and Infrastructure Gulf Coast Study All Phases

Exhibits 488-493

Exhibit 496: Loan Programs Office Portfolio Performance Results

Exhibit 500: COP21 Side Event "Nuclear Power: A Sustainable, Clean Power Source"

Exhibits 502-505

Exhibits 507-511

Exhibit 515

Exhibit 520

Exhibit 525

Exhibits 529-530

Exhibit 532

Exhibit 539

Exhibit 542, 543

Exhibits 546-550

Exhibit 554

Exhibit 590

Exhibit 594

Exhibit 615

Exhibit 617-619

Exhibit 621

Exhibit 624-25

Exhibit 627

Exhibit 632

Exhibit 634

Exhibit 638-639

Exhibit 651

Exhibit 653

Exhibit 671

Exhibit 673

Exhibit 675

Exhibit 678-679

Exhibit 682

Exhibit 690

Exhibits 703-705

Exhibit 707

Exhibit 713

Exhibit 716

Exhibit 719

Exhibit 727-728

Exhibit 731-732

Exhibit 734

Exhibit 736

Exhibit 762

Exhibit 783

Exhibit 790

Exhibit 792

Exhibit 837-842

Exhibit 852

Exhibit 862

Exhibit 864-865

Exhibit 931

Exhibit 938

Exhibit 967

Exhibit 969

Exhibit 970

Exhibit 1011

Exhibit 1014

Exhibit 1027

Exhibit 1074

Exhibits 1101-1102

Exhibit 1112

Exhibit 1118

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Andrea K. Rodgers

Attorney

Law Offices of Andrea K. Rodgers

andrearodgers42@gmail.com

T: (206) 696-2851

Exhibit 4

From: Julia Olson <juliaaolson@gmail.com>
Date: October 18, 2018 at 4:49:17 PM PDT
To: "Norman, Erika (ENRD)" <Erika.Norman@usdoj.gov>
Cc: "Boronow, Clare (ENRD)" <Clare.Boronow@usdoj.gov>, "Duffy, Sean C. (ENRD)" <Sean.C.Duffy@usdoj.gov>, "Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>, "Singer, Frank (ENRD)" <Frank.Singer@usdoj.gov>, Andrea Rodgers <andrearodgers42@gmail.com>, Phil Gregory <pgregory@gregorylawgroup.com>
Subject: Re: Document Exhibits

Erika,

We received the thumb drive this afternoon. I had requested that you send them for early morning delivery and you did not.

Here is the fed ex information showing regular overnight delivery scheduled for 3 p.m. leaving us very little time to review the documents and prepare our objections, which are due tomorrow. Again, this lack of professionalism and courtesy is concerning, counter to the collegiality this District Court expects of counsel, and prejudicial to Plaintiffs.

FedEx. Shipping ▾ Tracking ▾ Printing Services ▾ Locations ▾ Support ▾ Sign In ⓘ 🔍

TRACK ANOTHER SHIPMENT

[Redacted Tracking Number] ✎ ☆ ?

Scheduled delivery:
Thursday 10/18/2018 by 3:00 pm

● — ● — ● → — ●

Julia

Exhibit 5

WILD EARTH ADVOCATES
1216 Lincoln Street
Eugene, OR 97401
JuliaAOlson@gmail.com

September 28, 2018

VIA EMAIL AND HAND DELIVERY (USB FLASH DRIVE)

Sean C. Duffy
Frank Singer
Marissa Piropato
Clare Boronow
Erika Norman

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
NATURAL RESOURCES SECTION

601 D Street NW

Washington, DC 20004

Sean.c.Duffy@usdoj.gov

Frank.Singer@usdoj.gov

Marissa.Piropato@usdoj.gov

Clare.Boronow@usdoj.gov

Erika.Norman@usdoj.gov

Re: *Juliana v. United States*, 6:15-cv-01517-TC, re: Request to Stipulate to Authenticity of Government Documents

Dear Sean, Frank, Marissa, Clare, and Erika,

We are delivering together with this letter a USB flash drive containing 410 documents and a table which identifies the documents in the same format as the table was filed with Plaintiffs' Second Motion *in Limine* on August 24, 2018 [ECF 340]. Plaintiffs request that Defendants stipulate to the authenticity of these documents on or before October 5, 2018 so that we can avoid filing a third Motion *in Limine* and the accompanying briefing.

Regards,

/s/

Julia A. Olson

cc: Philip L. Gregory
Andrea Rodgers

Exhibit 6

GREGORY LAW GROUP
1250 Godetia Drive
Redwood City, CA 94062-4163
pgregory@gregorylawgroup.com

June 13, 2018

VIA EMAIL

Sean C. Duffy
Frank Singer
Marissa Piropato
Clare Boronow

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION

601 D Street NW
Washington, DC 20004

sean.c.duffy@usdoj.gov

frank.singer@usdoj.gov

Marissa.piropato@usdoj.gov

clare.boronow@usdoj.gov

Re: *Juliana v. United States*, 6:15-cv-01517-TC, Pending Requests for Admissions, Rule 30(b)(6) Depositions, and Motion for Protective Order

Dear Sean, Frank, Marissa, and Clare,

In response to statements made by Defendants and Judge Coffin at the June 6 Status Conference, as well as the discussion of counsel at the June 5 meet and confer session and Marissa's letter of May 21, Plaintiffs wanted to propose an alternative path to the pending Requests for Admissions and Rule 30(b)(6) depositions, which we believe will satisfy the concerns Defendants have expressed in their recent Motion for a Protective Order:

1. **Requests for Admissions:** As we have conveyed, Plaintiffs seek the most efficient means to narrow the facts in dispute in the case and to establish the foundation necessary for the admission of various documents that contain information that is relevant to the case. By utilizing Requests for Admissions ("RFAs"), Plaintiffs have sought both to authenticate documents (FRCP 36(a)(1)(B)) and to obtain admissions as to "facts, the application of law to fact, or opinions about either." FRCP 36(a)(1)(A). We understand that it is your position that the most efficient way to authenticate documents would be to do so through the spreadsheet process we have previously discussed during our discovery conferences and with Judge Coffin.

June 13, 2018
Page 2 of 5

For purposes of expediting the process to come to agreement on the authenticity of documents, Plaintiffs propose withdrawing the pending RFAs and serve RFAs in a spreadsheet format organized by agency Defendant. Plaintiffs will provide Defendants with a PDF of each Bates stamped document for authentication purposes and a spreadsheet with the following columns:

- (1) the title of the document;
- (2) the document's full citation;
- (3) the Bates number(s) of the document;
- (4) the source or author of the document;
- (5) the website URL to the document if one is available;
- (6) Defendants' authentication of the document (an admission or denial that the document is what it is claimed to be);
- (7) if Defendants cannot authenticate the document, the reason why Defendants cannot authenticate the document;
- (8) as to the website from which the document or statement was taken, that the website was created or kept by a public office as authorized by law; and
- (9) the name of public office authorized to keep such a record.

A draft of that spreadsheet is attached.

Plaintiffs would utilize this method of RFAs so that Defendants could agree to authenticate the underlying documents from government sources where Plaintiffs have provided Defendants with both the document and a citation as to where the document comes from so that verification of the authenticity of the document from the federal source should not be onerous. The link to the document on the spreadsheet will have the URL where available.

This procedure would track the one described by Marissa in her May 21, 2018 letter as "the most efficient mechanism for narrowing the issues for trial": "However, in an effort to work with Plaintiffs, we propose that for RFAs that quote or closely track statements by the agencies, we will

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proceed by admitting the authenticity of the document cited for each admission rather than the truth of the underlying statements. Courts have recognized that a request for authenticity of a document or statement is appropriate for RFAs....”

This procedure also would track the one described by Marissa at the June 6 Status Conference: “That plaintiffs issue RFAs to authenticate the subject documents, and then the court can take judicial notice of what the documents said. So on June 2011, the Forest Service report, insert paragraph.”

This procedure also would track the one described by Judge Coffin at the June 6 Status Conference: “the agreement that the documents are authentic and admissible is all that’s necessary, and I won’t require the government to make admissions that the documents are true because they may contest the accuracy of some of the documents, and, if so, they are free to do that at trial. But the documents come in. They are evidence. The court can consider the documents as evidence and draw whatever inferences the court will draw from those documents. So I think that solves that problem.”

Once authenticity of the documents has been established, Plaintiffs would then file a motion *in limine* for judicial notice of the documents and/or the specific facts stated on certain pages of a specific document. In opposing the motion *in limine*, Defendants would have the opportunity to object that the statement or fact is subject to reasonable dispute under Rule 201 or any other objection Defendants may have. This procedure would track the one described by Judge Coffin at the June 6 Status Conference: “What I have done in the past in cases before me is I have had the party that wants the court to take judicial notice to basically file a motion *in limine* asking the court to take judicial notice of the following, and then you list all the items that you want the court to take judicial notice of. And then you serve that on the other party, and the court awaits the other party’s response. And if there’s any disagreement on any items, then the court can have a preliminary hearing to sort that out.”

If Defendants agree to this procedure, Plaintiffs would withdraw the pending RFAs and Defendants would withdraw their Motion for Protective Order as to all RFAs. If Defendants do not believe this procedure would moot the pending Motion for Protective Order as to the RFAs, what is Defendants’ position on why the Motion must proceed?

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Page 4 of 5

4. **Rule 30(b)(6) Depositions:** As to the pending Rule 30(b)(6) depositions, Plaintiffs are willing to break down Subject Areas (1, 2, and 4) into contention interrogatories and will get those to you shortly. Please confirm we have reached agreement that each side may exceed the 25 interrogatory limit imposed by the Federal Rules for interrogatories relating to these subject areas. As to Subject Area 3, if Defendants will agree (1) to produce any final reports of Defendant Departments and Agencies on actions they will take to implement Executive Order 13783 and An America First Energy Plan, such as the Final Report issued by Secretary Wilbur Ross of the Department of Commerce in October 2017, which Plaintiffs cannot otherwise access on websites; (2) to authenticate those final reports; and (3) to not oppose judicial notice of those final reports as stating the current policies of the Defendant Departments and Agencies, Plaintiffs will also withdraw Subject Area 3 of the 30(b)(6) deposition notices.

We look forward to your prompt response on this alternative path as to Requests for Admissions and Rule 30(b)(6) depositions and whether this path satisfies the concerns Defendants expressed in their recent Motion for a Protective Order.

Regards,

/s/

Philip L. Gregory

Attachment

cc: Julia A. Olson

Andrea Rodgers

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Page 5 of 5

Spreadsheet for Authenticity of Documents

As of June 13, 2018

Exhibit 7



U.S. Department of Justice

Environment and Natural Resources Division

90-1-4-14528

*Natural Resources Section
P.O. Box 7611
Washington, DC 20044*

*Telephone (202) 305-0440
Facsimile (202) 305-0506*

July 27, 2018

VIA E-MAIL ONLY

Julia A. Olson (juliaolson@gmail.com)
Philip L. Gregory (pgregory@gregorylawgroup.com)
Andrea Rodgers (andrearodgers42@gmail.com)

Re: Juliana, et al. v. United States, et al.

Dear Phil:

I write in response to your request earlier today that Defendants provide an explanation for the documents that they seek in conjunction with their deposition notices. Because this letter paraphrases and/or quotes from documents Plaintiffs designated as “confidential material” under the protective order, Defendants also designate this letter as “confidential material” under the protective order.

Before turning to your request, Defendants reiterate their position that discovery (both fact and expert) is illegal in this lawsuit. In light of the October 29 trial date and Judge Coffin’s statements of the potential for waiver, Defendants served Plaintiffs with deposition notices and companion requests for production. But to be clear, the service of those documents does not constitute a waiver of the United States’ threshold position that discovery is improper.

Turning to your request, Defendants seek two categories of records from the individual Plaintiffs. The first set of documents Defendants seek relates to allegations in the complaint and/or statements asserted by declaration of physical or non-physical injury each Plaintiff sustained. Each deposition notice contains a subpoena and associated “Attachment A” corresponding to each Plaintiff. Each Attachment A identifies the relevant paragraphs from the first amended complaint that set forth allegations of injury for the deponent to whom the notice and subpoena is directed. Defendants seek records that relate to those allegations. Each Attachment A also identifies by ECF filing number the declaration associated with each witness. Defendants seek records that relate to the statements in those declarations that relate to injury. By way of example, the first amended complaint alleges that “[t]he 2015 summer heat has caused Avery to avoid outdoor activities to prevent becoming overheated,” and that Avery suffers from allergies. ECF No. 7 ¶ 41. If Avery visited with a physician or other person who assisted in the treatment, diagnosis, or documentation of the experiences alleged in paragraphs 41-43 of the first amended complaint and if those visits were documented in any way (e.g., a

medical file, notes from the treating medical professional, medical and / or personal logs, letters to or from the treating medical professional, prescriptions, etc.), Defendants seek production of those records. Likewise, if a medical professional is treating Avery for allergies, we would like any related medical records. Further, in her declaration Avery states [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Again, if the events described in her declaration were documented in medical and / or personal documents, those documents should be produced. In sum, each deponent should go through each paragraph of their declaration and each paragraph relating to them in the complaint and ask: *Are there any medical and / or personal documents that discuss this item?* If there are such documents, they should be reviewed for privilege and, if no privilege applies, produced. If there are no such documents, you can let us know by letter.

The second set of documents Defendants seek related to allegations in the complaint and/or statements asserted by declaration that Defendants caused Plaintiffs' injuries. Plaintiffs served expert reports from seventeen experts. If the individual Plaintiffs are relying on their experts to show that Defendants caused Plaintiffs' injuries, then there is nothing further to produce. But if any one or more of the Plaintiffs assert a belief or knowledge that Defendants caused Plaintiffs' injuries based on something beyond Plaintiffs' experts' reports, Defendants seek production of documents such individual Plaintiffs may have that relate to those additional reasons.

Sincerely,

/s/ Frank J. Singer

Frank J. Singer
Senior Litigation Counsel
U.S. Department of Justice

CC: Sean C. Duffy
Marissa A. Piropato
Clare Boronow