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May 10, 2018

**FILED ELECTRONICALLY VIA ECF**

Honorable Joel H. Slomsky  
James A Byrne U.S. Courthouse  
Room 13614  
601 Market Street  
Philadelphia, PA 19106

**Re: Doe v. Blocker, Case No: 16-cv-6039 (E.D. Pa.)**

Dear Judge Slomsky,

The attached letter, dated May 10, 2018, was sent to Plaintiffs' counsel in response to a letter from Plaintiffs, dated May 1, 2018 and filed with the Court, regarding Defendant's responses and objections to plaintiffs' interrogatories. I respectfully submit this letter to update the Court on the current status of the discovery dispute between the parties.

Best regards,

A handwritten signature in blue ink that reads "Kathy A. Le".

Kathy A. Le  
Deputy Attorney General



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May 10, 2018

**VIA ELECTRONIC MAIL**

Jonathan S. Goldstein  
Shawn M. Rogers  
McNelly & Goldstein, LLC  
11 Church Road  
Hatfield, PA 19440

**Re: Doe v. Blocker, Case No: 16-cv-6039 (E.D. Pa.)**

Dear Jonathan and Shawn,

I write in response to the letter you sent me, dated May 1, 2018, regarding Defendants' Response and Objections to Plaintiffs' interrogatories. As an initial matter, please be aware that the letter was addressed to my old office address. Please note the new address, above, for future correspondence. Defendant responds to the groupings in your letter as follows:

**Interrogatories Nos. 1, 5, 8, and 13**

Interrogatory Nos. 1 and 5 request identification of every person who has been subject to a 302 commitment in the last 7 years and entered into the PICS database. Interrogatory No. 8 requests identification of every person who has been subject to a 302 commitment in the last 7 years and submitted by PSP to the NICS database. Interrogatory No. 13 requests, for each individual subject to a 302 commitment in the last 7 years, identification of each instance in which the individual was arrested, detained, incarcerated, stopped and frisked, charged with a criminal offense, and/or subject to a court proceeding, during the 60-day transfer period following commitment.

First, you argue that PSP's receipt of notification of Section 302 commitments and entry of that information into the state and national databases is crucial information to this litigation. Defendant agrees that the process and timing of the entry of that information is relevant to this litigation. Defendant has provided information relating to the process for receipt of these notifications and entry into the PICS and NICS database. Defendant has also provided general statistics on the volume of such commitments for each month since January 2012. The actual identity and circumstances of each and every individual committed under Section 302 is not

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crucial to a determination whether the remedies provided in the Uniform Firearms Act provide sufficient due process before or after depriving these individuals of firearms as a result of the commitment. Moreover, identification of each and every instance wherein each and every one of the committed individuals was arrested, detained, incarcerated, stop and frisked, charged with a criminal offense and/or subject to a court proceeding is equally if not more irrelevant to whether due process has been provided.

Second, you argue that the information sought is pertinent whether Plaintiffs challenge is facial or as-applied. This fundamentally misconstrues a facial challenge. In a facial challenge, plaintiff must establish that “no set of circumstances exists under which the Act would be valid, i.e., that the law is invalid in all of its applications.” Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449-450 (2008). The specific circumstance of when/how/why each individual person was committed under Section 302, and their criminal history may be relevant to a challenge raised by each of those individuals but it entirely not relevant to whether the Uniform Firearms Act is constitutional on its face. Even if plaintiffs showed that 9 out of 10 persons committed under Section 302 are not violent individuals, this would fail to establish that “no set of circumstances exist under which the Act is valid”, and thus would not invalidate the Act *on its face*.

Third, contend that the Interrogatories have not asked for mental health information shielded from disclosure pursuant to 37 Pa. Code § 33.103. Section 33.103(e) states:

Mental health records information received or maintained by the State Police under section 6111.1(b) and (f) of the act (relating to Pennsylvania State Police) shall be confidential and not subject to public disclosure. The information shall be available only to the State Police for the purposes of determining, under sections 6109(d) and 6111.1(b) of the act, if the potential applicant is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm, or obtaining a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth, as defined under Federal or State law, and for the purpose of informing the licensee/sheriff making inquiry under sections 6109(d) and 6111.1(b)(iii) of the act.

In other words, PSP can only use the information collected in the mental health database for running background checks in relation to firearm purchases and transfers.

You contend that data regarding notifications of commitments and entry of those commitments into PICS and NICS, and subsequent criminal involvement does not implicate mental health information. Defendant agrees that data regarding mere notifications and entry of commitments without revealing individual information does not reveal mental health information in violation of 37 Pa. Code § 33.103. Defendant already produce this level of information. But plaintiffs have not limited their request to this information. No, Plaintiffs explicitly asked for the identity and circumstances of each and every individual committed under Section 302, information which PSP possesses only by virtue of the Uniform Firearms Act and protected from disclosure pursuant to 37 Pa. Code § 33.103.

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Interrogatories Nos. 14, 15, 16, and 17

In these interrogatories, plaintiffs seek information, for the last 7 years, for every instance in which every individual committed under Section 302 was involved (within the 60-day transfer period) in: (i) violent crime; (ii) discharge of a firearm; (iii) any interaction with state police, including but not limited to search warrants arrests, incident reports, police encounters, entry of court orders, and commencement of forfeiture proceedings; (iv) executed search warrants. Interrogatory 17 asks for identification of all instances in the last 7 years when an individual committed under Section 302 sought relief under any of the 3 forms of relief provided, including individual identifying information, information on the commitment, and information on the relief process itself.

Defendant's response, *supra*, with regards to the relevancy and confidentiality objections applies equally here. In addition, you take issue here with Defendant's objection that the requests are "unduly burdensome to comply with, and not proportional to the needs of this case." Defendant's objection explained that none of the information sought is maintained in the mental health database. The information sought is maintained in at least 3 other systems not connected to the mental health database and maintained by different vendors. Providing this information would require searching each system for each individual person who has been subject to a Section 302 commitment in the last 7 years—there are currently nearly 180,000 entries for 302 commitments in the mental health database. Some of the information, such as search warrants, is not maintained in an electronically searchable format, to the extent PSP has any information at all, and require manually reviewing—for each individual person—incident and other reports to see if there is any mention of the information sought.

You state that "the amount of effort PSP must expend" to respond to plaintiff's discovery requests "is not a valid basis for objection." This statement is simply not true and is directly contrary to the federal rules. Federal Rule of Civil Procedure includes a discussion on proportionality in its rule on scope of discovery:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Rule 26(b)(1). See United States ex rel. Customs Fraud Investigations, LLC v. Victualic Company, 839 F.3d 242 (3d Cir. 2016). The burden and expense to Defendant of providing this requested information outweighs its likely benefit, given that plaintiffs do not need the information to maintain this facial challenge, as discussed above.

Interrogatories Nos. 22 and 23

Interrogatory No. 22 seeks identification of all instances where hunting licenses were issued to individuals subject to Sections 302, 303 and 304 commitments, as well as relevant

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policies and procedures. Defendant's objections stated that PSP has no responsibility for issuing or revoking hunting license and therefore the information requested is not within Defendant's knowledge or information to provide. PSP does not have any relevant policies or procedures.

Interrogatory No. 23 for all individuals subject to Sections 302, 303 and 304 commitments, each instance of issuance or revocation of Act 235 permit, license to carry firearms and license to carry concealed firearms. With regards to licenses to carry firearms or concealed carry, Defendant's objections stated that PSP has no responsibility for issuing or revoking hunting license and therefore the information requested is not within Defendant's knowledge or information to provide. PSP had one relevant policy/procedure document, which was already produced. With regards to Act 235 permits, PSP has responsibility for issuance and revocation. The process for handling these permits was described. Defendant objected to providing individual information on each and every permit issued or revoked for the same reasons discussed above.

Plaintiffs have not provided any basis that would require Defendant to amend his responses to the plaintiffs' interrogatories at this time.

Best regards,

A handwritten signature in blue ink, appearing to read "Kathy A. Le".

Kathy A. Le  
Deputy Attorney General