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May 2, 2018

\*ADMITTED IN PENNSYLVANIA & NEW JERSEY

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+ OF COUNSEL

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

Re: John Doe I, et al. v. Wolf, et al.

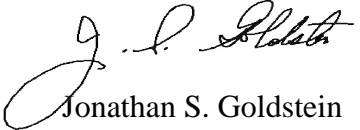
Dear Judge Slomsky:

This Court is aware of discovery issues between the parties to this litigation, and a telephone conference is currently scheduled for May 10, 2018, at 3 p.m.

The attached meet and confer letter, dated May 1, 2018, related to Defendant's responses to Plaintiffs' interrogatories represents Plaintiffs' most recent effort to resolve these issues. Plaintiffs respectfully submit our May 1, 2018 letter to update this Court on the current status in advance of next week's telephone conference.

Thank you for your consideration.

Very truly yours,

  
Jonathan S. Goldstein  
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May 1, 2018

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21 South 12<sup>th</sup> Street, Third Floor  
Philadelphia, PA 19107-3603

Re: *Doe v. Blocker*, E.D.Pa. No. 16-6039

Dear Ms. Le and Mr. Joel:

On November 7, 2017, we served Plaintiffs' First Set of Interrogatories on Defendant. On April 24, 2018, Defendant served his Responses and Objections to the interrogatories, nearly six months after service. Thus, Defendant's objections to the requests for production are waived. *See Fed. R. Civ. P. 33* ("The responding party must serve its answers and any objections within 30 days after being served with the interrogatories"); *Klitsch v. Gen. Motors Corp.*, 1990 WL 192037, at \*1 (E.D. Pa. Nov. 30, 1990) (failure to make timely objections to interrogatories constitutes waiver of any objections).

Plaintiffs reserve the right to pursue waiver of Defendant's objections or more complete answers to those Interrogatories Defendant answered. Regarding Defendant's individual objections, Plaintiffs respond as follows, grouped by type of objection lodged:

Interrogatories Nos. 1, 5, 8 and 13

These four interrogatories request data for the previous seven years related to: (1) notifications to the Pennsylvania State Police (PSP) of Section 302 temporary emergency commitments by judges, state mental health review officers or county mental health and mental

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retardation administrators (Interrogatory No. 1); (2) PSP's submission or input of Section 302 temporary emergency commitments to the PICS database (Interrogatory No. 5); (3) PSP's submission of Section 302 temporary emergency commitments to the NICS database (Interrogatory No. 8); and (4) individuals subject to Section 302 temporary emergency commitments who were arrested, detained, incarcerated, stopped and frisked, charged with a criminal offense and/or subject to court proceedings (Interrogatory 13).

Defendant objected on three separate grounds to each of these interrogatories. First, PSP contends that these requests are "overly broad, unduly burdensome to comply with, and not proportional to the needs of this case." This objection is insufficiently specific to allow Plaintiffs to provide a full response; however, a request for information regarding PSP's receipt of notification of Section 302 commitments, entry of that information into the state and national databases, and whether those individuals were the subjects of subsequent involvement with the criminal justice system is crucial information to this litigation.

Second, PSP claims that the information sought is irrelevant to Plaintiff's facial constitutional challenge. Whether Plaintiffs have advanced a facial or as applied challenge has no bearing on whether they are entitled to the information sought, as basic information regarding affected individuals is pertinent to either type of challenge.

Third, Defendant erroneously claims that these Interrogatories request mental health information shielded from disclosure pursuant to 37 Pa. Code § 33.103, which is false. Data regarding notifications to PSP of Section 302 temporary emergency commitments, entry of those commitments into PICS and NICS, and subsequent criminal justice system involvement clearly does not implicate mental health information.

To the extent that this request might implicate specific mental health records, PSP's assertion that the records are private and protected does not place them beyond the reach of this litigation. This action centers on mental health records/information and the impact of that data on individuals' Second Amendment rights. In other contexts, protected records are discoverable – records of sexual assaults against minors are statutorily sealed, but, if litigation centered on certain aspects of those assaults, under proper terms and conditions, those records would be available to the litigants. Plaintiffs seek to obtain any mental health information responsive to these interrogatories utilizing a protective order or some other appropriate protective scheme.

#### Interrogatories Nos. 14, 15, 16, and 17

These four interrogatories request information for the preceding seven-year period relating to: (1) instances of violent crime or discharge of a firearm during the 60-day transfer period under 18 Pa.C.S. § 6105(a)(2)(i) (Interrogatory No. 14); (2) interactions between PSP and affected individuals during the year following the 60-day transfer period (Interrogatory 15); (3) instances where PSP has targeted an affected individual for investigation during the year following the 60-day transfer period (Interrogatory 16); and (4) individuals subjected to Section 302 temporary emergency commitments who have applied for post-deprivation relief (Interrogatory 17).

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PSP raises the same objections as for Interrogatories Nos. 1, 5, 8, and 13 – overly broad and unduly burdensome, facial challenge, and 37 Pa. Code § 33.103. Plaintiff's response to these objections is set forth in full above and need not be repeated.

In addition, PSP objects to Interrogatories Nos. 14-17 on the grounds that the information needed to respond is not maintained in a single database. Defendant does not assert that no records exist that would enable PSP to answer these interrogatories. Instead, PSP contends that it would have to “manually search all of its various records for each individual committed under Section 302.” Nothing in Rule 33 mandates that a plaintiff may only seek information that is simple for a defendant to gather. The amount of effort PSP must expend to retrieve data to answer these interrogatories does not form a valid basis for an objection.

#### Interrogatories Nos. 22 and 23

Interrogatory No. 22 seeks information related to the issuance of hunting licenses to individuals subject to Section 302 temporary emergency commitments, and Interrogatory No. 23 requests information related to the issuance of Act 235 permits, licenses to carry concealed firearms or licenses to sell firearms to individuals subject to Section 302 temporary emergency commitments.

Defendant objected on the same grounds as their objections to Plaintiff's requests to produce documents seeking the same information, claiming that PSP is not responsible for issuing hunting licenses or firearms permits or licenses. Plaintiff's request that PSP provide any responsive information in its possession that relates to the issuances of such licenses and permits, notwithstanding that PSP is not the issuer.

Defendant also objected to Interrogatory 23 to the extent that Plaintiff's seek information regarding any individual cases of Act 235, citing to 37 Pa.Code § 33.103. This Interrogatory does not request mental health information shielded from disclosure pursuant to Section 33.103. In the event that this request does implicate mental health records, PSP requests that this information be provided under an appropriate protective order or other protective device.

Defendant has lodged objections to Interrogatory 23 based on three statutory/regulatory schemes. First, PSP raises 18 Pa.C.S. § 6111(g)(3) and (i), which relate to penalties imposed upon sellers of firearms for requesting confidential information from PSP in the process of sales (subsection g), or disclosing information obtained from a potential purchaser, transferee or applicant (subsection i). Neither statutory section pertains to the information Plaintiff requested in Interrogatory 23.

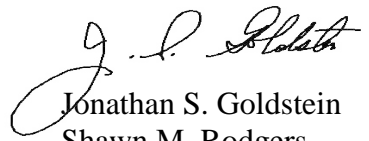
Second, Defendant objected based on 18 Pa.C.S. § 9101, *et seq.*, which is the Criminal History Record Information Act. Defendant fails to provide a specific section of the Act that would prohibit PSP from providing the requested information.

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Third, Defendant lodged an objection based on 28 C.F.R. § 25.1, *et seq.*, which relates to the National Instant Criminal Background Check System, without stating which specific section of this regulatory scheme would bar PSP from answering this Interrogatory.

Plaintiffs request that PSP amend its answers to the Interrogatories without objections. Plaintiffs will set up a meet and confer phone call next week if you require clarification as to our concerns.

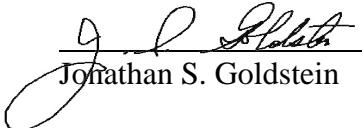
Very truly yours,



Jonathan S. Goldstein  
Shawn M. Rodgers

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of May, 2018, copies of this Status Letter to the Honorable Joel H. Slomsky were served, via electronic delivery through the Court's ECF filing system, which will distribute copies to all counsel of record.

  
Jonathan S. Goldstein