

The Honorable Lauren King

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity  
as President of the United States, et al.,

Defendants.

NO. 2:25-cv-00244-LK

PLAINTIFFS' MOTION TO COMPEL  
DISCOVERY

NOTE ON MOTION CALENDAR:  
Wednesday, May 21, 2025

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## I. INTRODUCTION

Immediately after this Court enjoined Defendants from conditioning or withholding funding under the challenged executive orders, Defendants appear to have done just that. To investigate Defendants' seeming non-compliance with the preliminary injunction, and determine whether contempt sanctions are appropriate, this Court ordered expedited discovery into Defendants' termination of a grant to a physician at Seattle Children's Hospital. Plaintiffs promptly served written discovery pursuant to that order. But Defendants have now categorically refused to respond.

Instead, Defendants have unilaterally declared that Plaintiffs' requests—and this Court's two separate orders allowing them—are moot because, after Plaintiffs moved for contempt and this Court ordered discovery, Defendants re-instated the terminated grant. They maintain this refusal even after this Court's order just last week reiterating that Plaintiffs remain entitled to take "discovery this Court has already ordered in connection with Plaintiffs' motion for contempt." Dkt. #273 p.8.

Defendants are wrong. Their refusal blatantly contradicts this Court's orders, and their mootness objection is frivolous because Defendants' voluntary cessation of contemptuous conduct does not moot Plaintiffs' discovery requests, particularly as this Court can still provide relief via monetary sanctions. Nor do their other objections support their total refusal to engage in discovery. Their boilerplate relevance and privilege objections are so flimsy they amount to waiver. Defendants have made zero effort to substantiate any of their objections, nor have they complied with rules requiring them to identify what they are withholding and to log all privilege withholdings.

Defendants' disregard for this Court's orders is part of an emerging pattern in which Defendants treat court orders as little more than annoyances they are free to disregard. This has to stop. Accordingly, Plaintiffs request that this Court enforce its order granting expedited discovery, order Defendants to fully respond to Plaintiffs' discovery requests, and order Defendants to pay Plaintiffs' attorneys' fees incurred in bringing this Motion.

## II. BACKGROUND

### A. Plaintiffs Issue Discovery Requests Pursuant to This Court's Order

Immediately after this Court “enjoined [Defendants] from enforcing Sections 3(e) or 3(g) of Executive Order 14,168 to condition or withhold federal funding based on the fact that a health care entity or health professional provides gender-affirming care within the Plaintiffs States,” Dkt. #233 p.53, Defendant HHS (through its subagency NIH) cancelled a grant to Dr. Kym Ahrens at Seattle Children’s Hospital to provide gender-affirming care, Dkt. #243 p.2. This termination looked like a straightforward implementation of the Gender Ideology EO and thus a violation of this Court’s PI. *See* Dkt. ##244-1, 244-2, 245-2, 245-5, 245-6, 245-8, 245-9 (evidence and media reporting linking grant terminations to the enjoined EOs). Plaintiff States moved for contempt, and this Court preliminarily denied that motion, concluding that while the “evidence raises the possibility that the [challenged] revocation of grant funding was effected pursuant to Sections 3(e) or (g) of the Gender Ideology EO for an enjoined purpose,” additional evidence was necessary “to establish contempt” by “clear and convincing evidence.” Dkt. #258 p.13. Thus, the Court ordered “expedited discovery” into “whether the [challenged] funding revocation was carried out on the basis of the enjoined provisions in the Gender Ideology EO [.]” *Id.* p.15 (internal quotation omitted).

Plaintiffs promptly served their First Set of Interrogatories and Requests for Production to Defendants and a Subpoena Duces Tecum to Michelle Bulls, the signatory of the grant termination letter. *See* Decl. Andrew Hughes ISO Pls.’ Mot. Compel Disc. (Hughes Decl.) Exs. A, B. Those written discovery requests—and Defendants’ refusal to respond—form the basis for this Motion.

### B. Defendants’ Contemptuous Conduct Comes into Sharper Focus

Plaintiffs’ service of discovery requests started Defendants’ 30-day clock to respond.<sup>1</sup> In those 30 days, several things happened that further illuminated Defendants’ non-compliance with this Court’s PI.

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<sup>1</sup> Plaintiff States requested a response to the Bulls SDT by April 3, the day Ms. Bulls was deposed, but Defendants declined to comply by that date. Hughes Decl. Ex. C.

1           **1.       New documents**

2           In March, whistleblowers made Plaintiffs aware of numerous documents clearly pegging  
3 grant terminations to the Gender Ideology Order. One document, an internal NIH spreadsheet  
4 titled “Terminations - NICHD\_Master,” listed several terminated grants along with a  
5 “Termination Reason.” In the row for Dr. Ahrens’ grant, the Termination Reason was given as  
6 “gender ideology (EA14168).” Hughes Decl. Ex. D.<sup>2</sup>

7           Another document, a March 11 memo from then-NIH Acting Director Dr. Matthew  
8 Memoli to a “Senior Advisor” at HHS, detailed the steps NIH took to “align[]” its activities with  
9 “President Trump’s Executive Orders.” Under the section devoted to the Gender Ideology Order,  
10 Dr. Memoli wrote that NIH was in the process of “terminat[ing] active grants that promote or  
11 inculcate gender ideology.” Hughes Decl. Ex. E p.5 (capitalization omitted).

12           And on April 28, the White House released its “Report to the President on Protecting  
13 Children from Surgical and Chemical Mutilation Executive Summary.”<sup>3</sup> That report crowed that  
14 HHS had implemented Section 4 of the Denial-of-Care Order’s directive to defund grants into  
15 trans healthcare by “eliminat[ing] 215 such grants.” On April 30, Defendants wrote to Plaintiffs  
16 that they “are investigating” whether “HHS has violated the [PFLAG] preliminary injunction at  
17 least 215 times.” Hughes Decl. Ex. N. Each of these documents casts further, serious doubt on  
18 Defendants’ assertions that the termination of Dr. Ahrens’ grant had nothing to do with the EOs  
19 this Court enjoined.

20           **2.       Depositions of NIH witnesses**

21           In early April, Plaintiffs took depositions of the Director of the NIH Office of Policy for  
22 Extramural Research Administration (Michelle Bulls) and the recently departed Deputy Director  
23

24           

---

2   The Gender Ideology Order is Executive Order 14,168. Plaintiffs believe “EA” may stand for “Executive  
25 Action.” Mid-way down the spreadsheet, the reason for the terminations stops being filled in. As discussed *infra*,  
26 Ms. Bulls testified there are other spreadsheets where the reasons are provided.

3   Available at <https://www.whitehouse.gov/fact-sheets/2025/04/report-to-the-president-on-protecting-children-from-surgical-and-chemical-mutilation-executive-summary/>.

1 of the NIH Office of Extramural Research (Liza Bundesen).<sup>4</sup> These depositions further  
 2 undermined Defendants’ claim that the grant terminations were the result of any independent  
 3 NIH action. Rather, Ms. Bulls and Dr. Bundesen testified that NIH’s Office of Extramural  
 4 Research does not know how the terminated grants were chosen and made clear they did not  
 5 have any part in identifying grants for termination or drafting the termination letters. Hughes  
 6 Decl. Ex. G 136:3-4 (“Q: You didn’t write one word in this letter? A: No, just signed it.”), Ex.  
 7 H. Instead, both witnesses testified that NIH was provided a list of grants to terminate along with  
 8 template termination letters by a DOGE employee named Rachel Riley. Hughes Decl. Ex. G  
 9 31:1-5, 66:13-71:1, 73:24-74:10, 95:8-98:23; Ex. H 36:3-37:24. Moreover, the list of grants to  
 10 terminate were provided in a series of spreadsheets that identified by category for which they  
 11 were being terminated (e.g., “gender ideology,” “vaccine hesitancy,” “DEI”). Hughes Decl.  
 12 Ex. G 95:8-24. Ms. Bulls provided those spreadsheets to DOJ counsel in advance of her  
 13 deposition, but DOJ did not produce them. *Id.* 14:19-15:17, 17:7-18, 23:12-24, 24:8-25:18,  
 14 25:21-26:14, 27:2-18, 28:2-8, 28:13-29:10, 29:15-30:10.

### 15           **3. Additional grant terminations**

16           Since this Court granted expedited discovery, Plaintiffs became aware of additional  
 17 grants that Defendants terminated in apparent violation of this Court’s orders. This Court is  
 18 aware of many of these because Defendants filed a mea culpa on the docket. *See* Dkt. #272  
 19 (identifying 17 CDC grants Defendants terminated in violation of this Court’s TRO and contrary  
 20 to representations made by government counsel). In addition, Plaintiffs became aware of at least  
 21 eight additional NIH grants to researchers in the Plaintiff States that were terminated or had  
 22 funding withheld because the projects involved gender-affirming care. Hughes Decl. Ex. I. When  
 23 Plaintiffs brought these terminations to Defendants’ attention, counsel half-heartedly insisted  
 24

25 \_\_\_\_\_  
 26           <sup>4</sup> Defendants sought to quash these depositions, arguing they became moot once Dr. Ahrens’ grant was  
 reinstated. This Court denied their emergency-hearing request. Hughes Decl. Ex. F.

1 that the terminations “did not enforce the challenged sections of the EOs” but nevertheless  
 2 proceeded to reinstate them. *Id.*

### 3 **C. Defendants Refuse to Answer Plaintiffs’ Court-Ordered Discovery**

4 On April 18, Defendants served objections and responses to Plaintiffs’ written discovery.  
 5 Hughes Decl. Exs. J, K. They did not answer a single interrogatory or agree to produce a single  
 6 document. Instead, they objected that the discovery “was served pursuant to the Court’s prior  
 7 grant of expedited discovery relating to Plaintiffs’ motion for contempt, which was based on  
 8 NIH’s termination of [Dr. Ahrens’ grant]. That grant has been reinstated, and therefore any such  
 9 expedited discovery, and any discovery relating to the contempt issues Plaintiffs previously  
 10 raised, is moot.” Hughes Decl Ex. J p.2., Ex. K p.2 (citation omitted). Additionally, Defendants  
 11 raised almost identical boilerplate relevance and privilege objection to nearly every request, to  
 12 wit: “Defendants object to this interrogatory[/request] insofar as it seeks  
 13 information[/documents] covered by the deliberative process, attorney-client, work product, or  
 14 any other privilege” and ““Defendants further object to this request because it seeks information  
 15 not relevant to the claims and defenses in this case.” Hughes Decl. Exs. J, K. Despite objecting  
 16 to every request but one on privilege grounds, Defendants did not produce a privilege log.

17 Plaintiffs requested a meet-and-confer and followed up with a letter detailing their  
 18 concerns. Hughes Decl. Ex. L pp.3-4, Ex. M. At the meet-and-confer on April 25, Defendants’  
 19 counsel could not say whether they were going to stand on their objections. Hughes Decl. Ex. L  
 20 pp.1-2. On Monday, April 28, Defendants confirmed via email they would not respond to  
 21 Plaintiffs’ requests on the ground that they are supposedly moot. *Id.* p.1.

## 22 **III. ARGUMENT**

### 23 **A. Plaintiffs’ Discovery Requests Are Not Moot**

24 Defendants continue to insist Plaintiffs’ discovery requests are moot despite this Court  
 25 confirming, just last week, that Plaintiffs remain entitled to the discovery the “Court has already  
 26 ordered in connection with Plaintiffs’ motion for contempt.” Dkt. #273 p.8. This was not

1 | carelessness on the Court’s part; the Court made this ruling despite Defendants’ notice indicating  
 2 | Dr. Ahrens’ grant had been reinstated and asserting “Defendants’ position ... that Plaintiffs’  
 3 | expedited discovery requests are now moot.” *See* Dkt. #267 p.2. In light of this Court’s rulings  
 4 | granting expedited discovery and confirming that discovery remains live, Defendants’ unilateral  
 5 | decision to refuse to engage in discovery is flatly wrong.<sup>5</sup>

6 |       *First*, the issue of Defendants’ contempt is not moot. An issue is only moot when “there  
 7 | is no longer a possibility that [a party] can obtain relief for [their] claim.” *Ruvalcaba v. City of*  
 8 | *Los Angeles*, 167 F.3d 514, 521 (9th Cir. 1999). Here, there is still at least one form of relief this  
 9 | Court can order: monetary sanctions. A claim is not moot if a party may still be entitled to  
 10 | monetary relief. *See, e.g., Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862, 872 (9th Cir. 2002).  
 11 | Thus, if the requested discovery confirms the seemingly obvious—that Defendants terminated  
 12 | Dr. Ahrens’ grant pursuant to one or both of the challenged executive orders and in violation of  
 13 | the Court’s preliminary injunction order—Plaintiffs may still be entitled to monetary sanctions.  
 14 | *See, e.g., Bolbol v. HP Pavilion Mgmt.*, 2006 WL 8443064, at \*4 (N.D. Cal. Aug. 30, 2006)  
 15 | (denying preclusion sanctions as moot post-trial but awarding monetary sanctions).

16 |       The case for monetary sanctions would be especially strong if, as Plaintiffs suspect,  
 17 | Defendants made misrepresentations to the Court in opposing the contempt motion. Defendants  
 18 | claimed that “NIH terminated this grant using its preexisting authority, without reference to  
 19 | either EO.” Dkt. #253 p.6. This appears to be false. The “Terminations” spreadsheet and Memoli  
 20 | memorandum discussed above certainly suggest as much, to say nothing of the White House  
 21 | report bragging about grant terminations under the Denial-of-Care Order. Further discovery will  
 22 | likely confirm that Dr. Ahrens’ grant—and the others about which Plaintiffs have separately  
 23 | written Defendants, *see* Hughes Decl. Ex. I—were terminated to implement the Denial-of-Care

24 | \_\_\_\_\_  
 25 |       <sup>5</sup> As this Court also made clear, its stay exempts “any . . . necessary and jurisdictionally proper proceedings  
 26 | regarding the scope or enforcement of the preliminary injunction,” including additional discovery associated  
 therewith. Dkt. #273 p.8. Plaintiffs thus understand they may continue to take additional compliance-related  
 discovery beyond the limited discovery subject to this Motion.

1 and/or Gender Ideology Orders. Plaintiffs are entitled to this discovery to evaluate whether  
 2 Defendants made false statements to the Court that warrant sanctions. *See, e.g., United States v.*  
 3 *McCabe*, 323 Fed. App’x 580 (9th Cir. 2009) (upholding monetary sanction where attorney  
 4 violated duty of candor to the court); *Williams v. P.I. Properties No. 42, L.P.*, 2022 WL  
 5 17252573, at \*5 (N.D. Cal. Nov. 28, 2022) (finding material misrepresentations supported  
 6 monetary sanctions under Rule 11).

7 *Second*, even if the contempt issue were technically moot, it presents a textbook example  
 8 of voluntary cessation. A party’s “voluntary cessation of a challenged practice does not deprive  
 9 a federal court of its power to determine the legality of the practice.” *City of Mesquite v.*  
 10 *Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982). “Otherwise, a defendant could engage in  
 11 unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off,  
 12 repeating this cycle until he achieves all his unlawful ends.” *Already, LLC v. Nike, Inc.*,  
 13 568 U.S. 85, 91 (2013). To avoid voluntary cessation, Defendants must show that their wrongful  
 14 termination of funding could not “reasonably be expected to recur.” *Id.* But Defendants only  
 15 rescinded Dr. Ahrens’ termination *after* Plaintiffs moved for contempt, they have continued to  
 16 deny any violation of the PI order, and, worse, they apparently continue to violate the PI via  
 17 multiple new grant terminations. Defendants cannot overcome voluntary cessation.

## 18 **B. None of Defendants’ Remaining Objections Justify Their Failure to Respond**

### 19 **1. Defendants’ objections are so deficient they constitute waiver**

20 Nor do any of Defendants’ other objections justify their stonewalling. In refusing to  
 21 answer Plaintiffs’ requests, Defendants make the same boilerplate objections, including:  
 22 “Defendants ... object to this request because it seeks information not relevant to the claims and  
 23 defenses in this case.” But as Judge Mendoza explained, “[g]eneral or boilerplate objections ...  
 24 are improper—especially when a party fails to submit any evidentiary declarations supporting  
 25 such objections.” *Kuykendall v. Les Schwab Tire Ctrs. of Wash., Inc.*, 2:20-CV-00154-SMJ,  
 26 2021 WL 6275066, at \*2 (E.D. Wash. June 30, 2021) (quotation omitted). Instead, “[t]he burden

1 lies on the objecting party to show that a discovery request is improper” and “[w]here a party’s  
 2 objections are themselves vague and impermissibly overbroad, and no specifics are given, the  
 3 objecting party fails to carry its burden.” *Id.* (quotation omitted).

4 And while only mentioned in passing in the responses themselves, in counsel’s email of  
 5 April 22 (after the response deadline), Defendants suggest the objections are based on  
 6 “proportionality,” with no further explanation. Hughes Decl. Ex. L p.6. Proportionality depends  
 7 on “the importance of the issues at stake in the action, the amount in controversy, the parties’  
 8 relative access to relevant information, the parties’ resources, the importance of the discovery in  
 9 resolving the issues, and whether the burden or expense of the proposed discovery outweighs its  
 10 likely benefit.” Fed. R. Civ. Proc. 26(b)(1).

11 The discovery requests had the Court’s explicit permission and relate to Defendants’  
 12 compliance with this Court’s TRO and PI. They are plainly relevant. And the stakes are  
 13 doubtlessly important: Plaintiffs allege the federal government is violating their constitutional  
 14 rights and the rights of transgender and gender-diverse patients—and a court order on top of that.  
 15 By contrast, Defendants provide no explanation why the vast resources of the federal  
 16 government are insufficient to gather and produce the limited information and documents related  
 17 to their potential contempt. In fact, Ms. Bulls testified that she *already gathered* responsive  
 18 materials and gave them to counsel for Defendants. Hughes Decl. Ex G 17:7-18, 25:1-3, 33:11-  
 19 17. Any “proportionality” objection falls flat. And in any event, Defendants’ failure to  
 20 meaningfully raise objections by the deadline means these objections are waived. *See* Fed. R.  
 21 Civ. Proc. 37(a)(4) (“[I]ncomplete disclosure, answer, or response must be treated as a failure to  
 22 disclose, answer, or respond.”); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468,  
 23 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within  
 24 the time required constitutes a waiver of any objection.”).

2. **Defendants’ privilege objections are waived where they failed to provide a privilege log or disclose whether documents were withheld**

This same defect applies equally to Defendants’ threadbare privilege objections. Making matters worse, Defendants also failed to provide a privilege log or state whether they are withholding information on the basis of any of their objections as required by rules.

Assertions of privilege must be accompanied by a privilege log that “describe[s] the nature of the documents . . . not produced or disclosed-and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. Proc. 26(b)(5). Failing to do so waives the privilege. *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) (“[B]oilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege.”). None was provided here.

Additionally, the rules plainly state that “[a]n objection must state whether any responsive materials are being withheld on the basis of that objection.” Fed. R. Civ. Proc. 34(b)(2)(C). Here, Defendants’ do not state whether they are withholding anything on the basis of any objections. It is obvious that Defendants are withholding at least some relevant documents as Plaintiffs have now filed several of them and Ms. Bulls described many others she collected, yet none were produced. *See* Hughes Decl. Ex. G 17:7-18, 25:1-3, 33:11-17. But “Rule 34(b)(2)(C) is clear: if a party withholds responsive matter on the basis of an objection, it must so state.” *RG Abrams Ins. v. Law Offices of C.R. Abrams*, 2021 WL 4805315 at \*8 (C.D. Cal. Aug. 10, 2021).

Further, Defendants merely rattled off a list of privileges, including “any other privilege,” and object “insofar” as any of them might apply. Hughes Decl. Exs. J, K. Defendants then state they “will not furnish information in response” to Plaintiffs interrogatories and “will not produce documents in response” to Plaintiffs requests for production. *Id.* From these responses, Plaintiffs have no means to evaluate any claims of privilege, do not know whether any of them are actually

invoked, and do not even know the full list of privileges being claimed. Defendants' privilege objections are deficient to a degree that should also be held to constitute waiver. *See Burlington N. & Santa Fe Ry. Co.*, 408 F.3d at 1149.

**3. Defendants' claimed privileges are unsupportable, given the documents already known to exist**

Even based on the limited records uncovered to date, Defendants' invocations of the deliberative process privilege, the attorney-client privilege, and the work-product doctrine are overly broad and unsupportable. Plaintiffs address each in turn.

"For the deliberative process privilege to apply, the material must be predeliberative and deliberative." *Karnoski v. Trump*, 926 F.3d 1180, 1204 (9th Cir. 2019) (quotation omitted). "The deliberative process privilege shields documents that reflect an agency's preliminary thinking about a problem, as opposed to its final decision about it." *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 266 (2021). In the funding context, the privilege distinguishes between "a funding decision already made or, instead, a predeliberative memorandum" reflecting "predeliberative communication." *Casad v. U.S. Dep't of Health & Human Servs.*, 301 F.3d 1247, 1252 (2002) (evaluating claims of privilege in NIH funding case). Even when applicable, the deliberative process privilege "does not protect documents in their entirety; if the government can segregate and disclose non-privileged factual information within a document, it must." *Karnoski*, 926 F.3d at 1204.

Defendants' broad invocation of the deliberative process privilege is inconsistent with controlling caselaw. They repeatedly invoke the privilege over documents related to final decisions to terminate grants. *See Hughes Decl. Ex. J* pp.3-5 (invoking privilege in response to request for identities of individuals who authored social media post announcing list of grants "canceled" by NIH "[t]oday"); *id.* p.5 (same, for communications related to announced decision to terminate grant and deobligate funds); *id.* pp.5-8 (same, for documents related to publicly announced policies that served as the bases for hundreds of grant terminations). These

documents do not reflect decisions that any agency was *in the process* of making: these were decisions HHS, DOGE, and other agencies *had already made and communicated externally*. See, e.g., *Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 183 (1975) (deliberative process privilege does not apply to “actual decisions communicated outside the agency”).

Ms. Bulls’ sworn testimony confirms this. She testified that she personally terminated “somewhere between five hundred and a thousand” grants in the eleven weeks between January 20, 2025, and April 3, 2025, despite having terminated “less than five” grants in the prior thirteen years in her position. Hughes Decl. Ex. G 46:16-22; 98:11-24. Documents she received directing her to terminate grants reflect final decision-making—not predecisional deliberations. As Ms. Bulls repeatedly confirmed, each grant termination decision came in the form of an email to her attaching a spreadsheet showing which grants she must terminate and why. *Id.* 95:8-97:7, 120:4-14, 121:24-122:14, 124:2-17; 125:20-126:16, 126:25-127:19, 128:7-9, 129:24-131:7, 132:11-133:5, 134:5-136:9, 136:13-137:25, 139:21-140:24. None of these documents reflecting Defendants’ *completed* decision to terminate grants, and the reasons therefor, is deliberative.

Turning to attorney-client privilege, the privilege “is limited to communications made in the course of seeking legal advice from a professional legal adviser in his capacity as such.” *Olender v. United States*, 210 F.2d 795, 806 (9th Cir. 1954). The privilege is “narrowly and strictly construed.” *United States v. Gray*, 876 F.2d 1411, 1415 (9th Cir. 1989). Advice on how best to implement policy—such as Executive Orders—is not privileged even when provided by an attorney. See, e.g., *In re Cnty. of Erie*, 473 F.3d 413, 421 (2d Cir. 2007); *In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998). And where a portion of a document “is subject to attorney-client privilege,” that portion may be redacted and “the rest of the document [which is] unprivileged . . . should be produced to Plaintiffs.” *AU New Haven, LLC v. YKK Corp.*, No. 15-CV-03411 (GHW)(SN), 2016 WL 6820383, at \*7 (S.D.N.Y. Nov. 18, 2016).

1 Ms. Bulls' deposition establishes the existence of a wide swath of documents not covered  
 2 by attorney-client privilege. She received instructions to terminate grants from Rachel Riley with  
 3 DOGE, as transmitted through Dr. Matthew Memoli, Dr. Liza Bundesen, and Dr. Jon Lorsch in  
 4 leadership at NIH. Hughes Decl. Ex. G 30:11-33:24, 122:22-123:24. Other emails included  
 5 additional individuals from "the Department of Government Efficiency." *Id.* 31:1-14. There is  
 6 no indication that any of these people are lawyers, or that any of them was offering legal advice.  
 7 The attorney-client privilege cannot support Defendants' blanket refusal to produce discoverable  
 8 information and documents.

9 Finally, the work-product doctrine protects "mental impressions, conclusions, opinions,  
 10 or legal theories of a party's attorney" that were "prepared in anticipation of litigation or for  
 11 trial." Fed. R. Civ. Proc. 26(b)(3). "To qualify for work-product protection, documents must: (1)  
 12 be prepared in anticipation of litigation or for trial and (2) be prepared by or for another party or  
 13 by or for that other party's representative." *Am. C.L. Union of N. Cal. v. U.S. Dep't of Just.*,  
 14 880 F.3d 473, 484 (9th Cir. 2018) (quotation omitted).

15 Many documents responsive to Plaintiffs' discovery were not prepared by attorneys at  
 16 all. Nor is there any evidence they were produced in anticipation of litigation—to the contrary,  
 17 they were produced to terminate grants and notify grantees that their grants had been terminated.  
 18 Hughes Decl. Ex. G 94:8-95:7. Defendants' blanket withholding of such documents is improper.

### 19 **C. Plaintiff States Are Entitled to Their Fees for Bringing this Motion**

20 Where, as here, a party violates a court order regarding discovery and/or refuses to  
 21 respond to discovery, "the court must order the disobedient party, the attorney advising that  
 22 party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure,  
 23 unless the failure was substantially justified or other circumstances make an award of expenses  
 24 unjust." Fed. R. Civ. Proc. 37(b)(2)(C); *see also* Fed. R. Civ. Proc. 37(d)(3). Defendants cannot  
 25 possibly justify their blatant refusal to comply with this Court's order or respond to Plaintiffs'  
 26 discovery. Their mootness argument makes a mockery of this Court's authority and lacks any

1 basis in the law. Their threadbare objections are entirely unexplained in violation of basic  
 2 discovery rules and cannot possibly serve as a basis for their wholesale refusal to answer. And  
 3 they flatly ignored court rules requiring a privilege log and requiring them to state whether  
 4 documents are being withheld.

5 They did all this because they think they can get away with it. And unless and until a  
 6 court shows them otherwise, they're going to be right. Accordingly, this Court should order  
 7 Defendants and their counsel to reimburse Plaintiffs for their fees in bringing this motion.

8 To date, Washington has incurred \$11,540.20 in preparing this Motion, not counting time  
 9 spent preparing for and attending the meet-and-confer. Decl. Todd R. Bowers ISO Pls.' Mot.  
 10 Compel Disc. ¶10. Washington will supplement these figures on reply, including timesheets  
 11 complying with this Court's standing order. Because its fees are reasonable, the Court should  
 12 require Defendants and their counsel to pay them.

#### 13 IV. CONCLUSION

14 The Court should grant Plaintiffs' motion to compel discovery.

15 DATED this 30th day of April 2025.

16 I certify that this memorandum contains 4,197  
 17 words, in compliance with the Local Civil Rules.

18 I certify that on April 25, 2025 at 10:00 a.m. PST,  
 19 my colleague Will McGinty and I in good faith  
 20 conferred with Defendants' counsel Christian  
 21 Daniel, Vinita Andrapalliyal, and Robert  
 22 Bombard via Zoom in an effort to obtain the  
 23 requested discovery without court action.

21 NICHOLAS W. BROWN  
 22 Attorney General of Washington

23 /s/ Andrew Hughes

24 WILLIAM MCGINTY, WSBA #41868  
 25 CYNTHIA ALEXANDER, WSBA #46019  
 26 TERA HEINTZ, WSBA #54921  
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