

SHAWN MEERKAMPER (SBN 296964)  
shawn@transgenderlawcenter.org  
**TRANSGENDER LAW CENTER**  
P.O. Box 70976  
Oakland, California 94612  
Telephone: (510) 587-9696

AMANDA C. GOAD (SBN 297131)  
agoad@aclusocal.org  
**ACLU FOUNDATION OF SOUTHERN CALIFORNIA**  
1313 W. 8th Street, Suite 200  
Los Angeles, California 90017  
Telephone: (213) 977-9500

CHRISTINA S. PAEK (SBN 341994)  
cpaek@lambdalegal.org  
**LAMBDA LEGAL**  
4221 Wilshire Boulevard, Suite 280  
Los Angeles, California 90010  
Telephone: (213) 382-7600

NORA HUPPERT (SBN 330552)  
nhuppert@lambdalegal.org  
**LAMBDA LEGAL**  
65 E. Wacker Place, Suite 2000  
Chicago, Illinois 60601  
Telephone: (312) 663-4413

RICHARD SAENZ (*pro hac vice*)  
rsaenz@lambdalegal.org  
**LAMBDA LEGAL**  
120 Wall Street, 19th Floor  
New York, New York 10005  
Telephone: (212) 809-8585

DIMITRI D. PORTNOI (SBN 282871)  
dportnoi@omm.com  
MICHAEL J. SIMEONE (SBN 326844)  
msimeone@omm.com  
ELIZABETH A. ARIAS (SBN 318283)  
earias@omm.com  
SHIVANI I. MORRISON (SBN 342874)  
smorrison@omm.com  
**O'MELVENY & MYERS LLP**  
400 South Hope Street, 18th Floor  
Los Angeles, California 90071  
Telephone: (213) 430-6000

SHILPI AGARWAL (SBN 270749)  
sagarwal@aclunc.org  
**ACLU FOUNDATION OF NORTHERN CALIFORNIA**  
39 Drumm Street  
San Francisco, California 94111  
Telephone: (415) 621-2493

*Attorneys for Proposed Intervenor*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

JANINE CHANDLER, et al.,  
  
Plaintiffs,  
  
v.  
  
CALIFORNIA DEP'T OF CORRECTIONS  
AND REHABILITATION, et al.,  
  
Defendants.

Case No. 1:21-cv-01657-JLT-HBK

**PROPOSED INTERVENORS' NOTICE  
OF MOTION AND MOTION FOR  
LEAVE TO FILE A SUPPLEMENTAL  
REPLY IN SUPPORT OF  
DEFENDANTS' MOTION TO STRIKE**

Judge: Hon. Jennifer L. Thurston  
Courtroom: 4, 7th Floor

1 TO THE COURT, AND THE PARTIES, BY AND THROUGH THEIR COUNSEL OF  
2 RECORD:

3 PLEASE TAKE NOTICE that Proposed Intervenors will and hereby do move the Court  
4 for leave to file a Supplemental Reply in Support of Defendants' Motion to Strike, Dkt. No. 38,  
5 pursuant to Local Rules 137(c) and 230(m). Proposed Intervenors make this request for the  
6 narrow purpose of submitting a declaration that counsel for Proposed Intervenors obtained on  
7 June 29, 2022 made by Asia Davis, the "A.D" alleged in Plaintiffs' briefs and declarations to  
8 have been assaulted by a transgender woman. The declaration shows that Plaintiffs' rumors and  
9 accusations of a "May 2022 Alleged Rape" are entirely false. Dkt. No. 36 at 6. *See* Huppert  
10 Decl.

11 As explained in the attached declaration, good cause exists to grant this request. *See*  
12 Huppert Decl. Proposed Intervenors did not plan to file any Reply in Support of Defendants'  
13 Motion to Strike until this declaration, which they received on June 29, came to light. Huppert  
14 Decl. ¶7. The declaration was not available to Proposed Intervenors until that date, and Proposed  
15 Intervenors' counsel transmitted the declaration to counsel for Plaintiffs and Defendants less than  
16 24 hours after obtaining it. Huppert Decl. ¶6, 8. Thus, the inability to file the declaration before  
17 the reply deadline on Defendants' Motion to Strike was due to intervening circumstances beyond  
18 the Proposed Intervenors' control, and counsel acted promptly to inform the parties of the  
19 existence of conclusive evidence demonstrating that the "May 2022 Alleged Rape" simply did not  
20 happen.

21 Because Proposed Intervenors' counsel transmitted the declaration to the parties the very  
22 next day after they obtained it, and because this request is made only eight days after the original  
23 reply deadline, there is little risk of prejudice to Plaintiffs.<sup>1</sup> Plaintiffs themselves did not  
24 explicitly request that this Court look at their far-ranging extrinsic evidence and decide the  
25 Motions to Dismiss and Strike under a Rule 56 standard until their second Opposition brief on

26 <sup>1</sup> It is within the Court's discretion to consider a declaration submitted with a Reply where it is a  
27 "reasonable response" to the opposition. *United States ex rel. Doe v. Biotronik, Inc.*, No. 2:09-  
28 CV-3617-KJM-EFB, 2015 WL 6447489, at \*3 (E.D. Cal. Oct. 23, 2015), *aff'd in part, appeal*  
*dismissed in part on other grounds sub nom. United States ex rel. Sant v. Biotronik, Inc.*, 716 F.  
App'x 590 (9th Cir. 2017).

1 June 16, Dkt. No. 41. Plaintiffs’ declarations continue to be inadmissible and improper for the  
2 reasons explained in Proposed Intervenor’s earlier briefing, Dkt Nos. 32 and 40, and so their  
3 request will likely not be granted, further reducing the possibility of prejudice. But the  
4 accusations Plaintiffs filed with this Court are scandalous and incendiary, and evidence clearly  
5 refuting them should be presented even if the Court will ultimately disregard *all* of the extrinsic  
6 evidence.

7 Meet and confer efforts have been exhausted. Pursuant to the Court’s standing order,  
8 counsel for Proposed Intervenor solicited the parties’ position on this Motion by email in a meet  
9 and confer communication to which they attached the declaration on June 30, 2022. *See* Huppert  
10 Decl. ¶8. In this communication, counsel for Proposed Intervenor also invited Plaintiffs’ counsel  
11 to withdraw or correct the false allegations and suggestions concerning the nonexistent “May  
12 2022 Alleged Rape.” *Id.* Plaintiffs’ counsel first responded by email on June 30, 2022,  
13 indicating that they opposed the motion and declining the invitation to withdraw or correct the  
14 statements. Then, on July 5, Plaintiffs’ counsel indicated that they did *not* oppose the declaration  
15 being filed but that they intended to file it in the context of their own forthcoming motion. Also  
16 on July 5, 2022, counsel for Defendants indicated that they did not oppose the request for leave to  
17 file the supplemental Reply and the declaration, but that they would not stipulate to the filing of  
18 either; they also stated that their position was limited to the Motion to Strike and they opposed  
19 further briefing in general.

20 In light of Plaintiffs’ June 16 explicit request that the Court consider their declarations and  
21 resolve the Motions to Dismiss and Strike under a Rule 56 standard, and being now in possession  
22 of a declaration showing the anonymous third-party rumors of a sexual assault by a transgender  
23 woman put before this Court by Plaintiffs to be completely false, Proposed Intervenor request  
24 permission to correct the record.

25 Pursuant to Local Rule 137(c)’s requirement that, “if a document requires leave of court  
26 . . . counsel shall attach the document proposed to be filed as an exhibit to the moving papers  
27 seeking such leave and lodge a proposed order,” the proposed Reply, the declaration, and a  
28 proposed order are attached to this Motion.

Dated: July 5, 2022

Respectfully Submitted,

By: s/ Nora Huppert

NORA HUPPERT

RICHARD SAENZ

CHRISTINA S. PAEK

**LAMBDA LEGAL**

DIMITRI D. PORTNOI

MICHAEL J. SIMEONE

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*Counsel for Proposed Intervenors*