

**CIRCUIT COURT OF THE CITY OF ST. LOUIS  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI**

THE WASHINGTON UNIVERSITY d/b/a	)	
Washington University Physicians,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 2322-CC09640
	)	
ANDREW BAILEY, in his official capacity	)	
as Attorney General of the State of Missouri	)	
	)	
	)	
Respondent.	)	

**ANSWER AND COUNTERCLAIM TO  
WASHINGTON UNIVERSITY'S PETITION TO MODIFY  
CIVIL INVESTIGATIVE DEMANDS NOS. 23-19, 23-52, 23-53**

In accordance with Rule 55.07 of the Missouri Rules of Civil Procedure, Respondent Andrew Bailey, the Attorney General of Missouri, answers Petitioner Washington University's Petition to Set Aside Civil Investigative Demand. The Attorney General also counterclaims. On information and belief the Attorney General States as follows:

**INTRODUCTION**

1. Respondent admits the allegations in this paragraph.
2. Respondent admits that the CID to Washington University seeks records for, and relating to, patients treated at the Washington University Pediatric Transgender Center (the "Center"), among other records. Respondent further admits

that the Attorney General issued CIDs for testimony from one physician and one nurse who are associated with the Center. The Attorney General lacks sufficient information to admit or deny the remaining allegations in this paragraph, and thus denies these allegations.

3. Paragraph 3 is not a properly pled factual allegation, and therefore no response is required. To the extent that a response is required, the Attorney General admits that Washington University purports to seek guidance from the Court as described in this paragraph. Respondent denies any remaining allegations in this paragraph.

4. Paragraph 4 contains a legal conclusion to which no response is required. To the extent that a response is required, the Attorney General asserts that the Health Information Portability and Accountability Act (“HIPAA”), 42 U.S.C. §1320d, and 45 CFR §§ 164.502, 164.512 speak for themselves and denies any allegations inconsistent therewith. Additionally, the final sentence of Paragraph 4 is not a properly pled factual allegation, and therefore no response is required. To the extent that a response is required, the Attorney General admits that Washington University purports to seek guidance from the Court as described in this paragraph. Respondent denies any remaining allegations in this paragraph.

5. Paragraph 5 is not a properly pled factual allegation, and therefore no response is required. To the extent that a response is required, the Attorney General admits that there are reasonable grounds to seek Court intervention concerning Washington University’s compliance with the CIDs, but denies Petitioner’s allegation

that the CIDs “seek information that is only relevant to standard of care issues.” Furthermore, the Attorney General admits that Washington University purports to seek the relief described in Paragraph 5, but denies that Petitioner is entitled to any relief whatsoever, and denies any remaining allegations in the paragraph.

6. Paragraph 6 is not a properly pled factual allegation, and therefore no response is required. To the extent that a response is required, the Attorney General admits that Washington University purports to seek the relief described in Paragraph 6, but denies that Petitioner is entitled to any relief whatsoever, and denies any remaining allegations in the paragraph.

### **PARTIES**

7. Respondent admits that Washington University “operates the TGC,” which is located in St. Louis and has provided gender transition interventions to minors. To the extent further response is required, Respondent denies any remaining allegations in the paragraph.

8. Respondent admits he is the Attorney General of Missouri and that Missouri Attorney General’s office issued CIDs Nos. 23-19, 23-52, 23-53 pursuant to §407.040, RSMo.

### **JURISDICTION AND VENUE**

9. Paragraph 9 contains a legal conclusion to which no response is required. To the extent a response is required, the Attorney General asserts that the text of §407.070, RSMo, speaks for itself and denies any allegation inconsistent therewith.

10. Paragraph 10 contains a legal conclusion to which no response is required. To the extent a response is required, the Attorney General asserts that the text of §407.070, RSMo, speaks for itself and denies any allegation inconsistent therewith.

11. Paragraph 11 contains a legal conclusion to which no response is required. To the extent a response is required, the Attorney General admits that venue is proper in the Circuit Court of the City of St. Louis because Washington University and its Pediatric Transgender Center reside in the City of St. Louis.

### **BACKGROUND**

12. The Attorney General admits he sent CID 23-19 to Washington University on February 23, 2023, as part of an investigation into the Center. Respondent further admits that the investigation is based, in part, on an affidavit from whistleblower Jamie Reed, which made allegations of wrongdoing at the Center. The Attorney General lacks sufficient information to admit or deny whether the disclosures of patient information by the whistleblower are subject of an ongoing investigation by Petitioner and the United States Department of Health and Human Services Office of Civil Rights, or whether patients of the Center have expressed concern about the whistleblower's disclosures, and thus denies these allegations. The Attorney General denies any remaining allegations in this paragraph.

13. Respondent lacks sufficient information to admit or deny Petitioner's awareness of patient complaints, and thus denies the allegation. Respondent admits that the CIDs are not "directed" at specific consumer or patient complaints as they

instead directed at Washington University and two of its employees for purposes of investigating the whistleblower allegations. The Attorney General denies any remaining allegations in this paragraph.

14. The Attorney General lacks sufficient information to admit or deny Washington University's awareness of certain facts and thus denies the same. The Attorney General denies any remaining allegations in paragraph 14.

15. Respondent admits that the Attorney General has worked cooperatively with respect to the CIDs. The Attorney General lacks sufficient information to admit or deny whether Washington University has worked cooperatively in good faith, and thus denies this allegation. Respondent admits that Petitioner initially offered a general objection regarding the scope of the MMPA and has subsequently raised objection under HIPAA, but denies that these objections were the basis of producing medical information or offering access to medical records, which Washington University agreed to in March 2023. Respondent admits that the Attorney General agreed to keep documents confidential under the terms of § 407.060.1, RSMo, but denies that Washington University was assured that the State would never disclose documents "for any purpose," as the statute expressly permits disclosing statutes in a small number of circumstances, such as by presentation to a court, § 407.060.1, RSMo. The final sentence contains a legal conclusion to which no response is required. To the extent a response is required, the Attorney General asserts that the text of HIPAA, *see* 45 CFR § 164.512, speaks for itself and denies any allegation

inconsistent therewith. Respondent denies any remaining allegations in this paragraph.

16. Respondent admits that the parties have reached impasse. The Attorney General further asserts that Paragraph 16 contains implicit references to CIDs Nos. 23-19, 23-52, 23-53, the texts of which speak for themselves, and denies any allegation inconsistent therewith. Respondent lacks sufficient information to admit or deny the allegations concerning Petitioner's decision-making process or motivations, and thus denies the allegations. The Attorney General denies all other aver allegations in this paragraph.

17. Paragraph 17 contains a legal conclusion to which no response is required. To the extent a response is required, the Attorney General admits that the CID contains requests "related to the MMPA's proper authority" but denies that the CIDs at issue also include requests outside the scope of the MMPA. Respondent lacks sufficient information to admit or deny the allegations concerning Petitioner's opinions of the Attorney General's investigation, and thus denies the allegations. The Attorney General further asserts that his statements speak for themselves and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

a. Respondent admits that he issued a proposed emergency rule, titled "Experimental Interventions to Treat Gender Dysphoria," on April 13, 2023. The Attorney General asserts that the language of the emergency rule, quoted in Paragraph 17(a), speaks for itself and denies any allegation

inconsistent therewith. The Attorney General denies any remaining allegations in paragraph 17(a).

b. Respondent asserts that the topics referenced in Paragraph 17(b) were included in an October 25, 2023 letter from the Attorney General to Washington University, which speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in paragraph 17(b).

18. Respondent lacks sufficient information to admit or deny the allegations concerning Petitioner's communications or consultations with HHS OCR, and therefore denies the same. Further, the last sentence in Paragraph 18 is not a properly pleaded allegation and therefore requires no response. To the extent a response is required, the Attorney General admits that Washington University purports to seek guidance from the Court as described in Paragraph 18, but denies that Petitioner is entitled to relief under federal law, and denies any remaining allegations in this paragraph.

19. Paragraph 19 contains legal conclusions to which no response is required. To the extent a response is required, the Attorney General asserts that the CIDs are appropriate under the MMPA and requests for medical records—as well as documents and testimony related thereto—are squarely permitted by HIPAA and its implementing regulations, and denies any allegation inconsistent therewith. The last sentence in Paragraph 19 is not a properly pleaded allegation and therefore requires no response. To the extent a response is required, the Attorney General admits that

Washington University purports to seek the relief described in Paragraph 19, but denies that Petitioner is entitled to any relief whatsoever, and denies any remaining allegations in this paragraph.

**MISSOURI MERCHANDISING PRACTICE ACT**

20. Paragraph 20 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General denies the allegations in the paragraph.

21. Paragraph 21 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that the text of cited case law speaks for itself and is the best evidence of its content and context, and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

22. Paragraph 22 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that the text of §407.070, RSMo, speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in Paragraph 22.

23. Paragraph 23 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that the text of §407.040.1, RSMo, speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

24. Paragraph 24 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that



the text of the cited case law speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

25. Paragraph 25 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General admits that he has broad authority to enforce the MMPA, and further asserts that the text of the cited case law speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

26. Paragraph 26 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that the text of the cited case law speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

27. Paragraph 27 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General denies the allegations in the paragraph.

28. Paragraph 28 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General denies the allegations in the paragraph.

29. Paragraph 29 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General denies the allegations in this paragraph.

30. Paragraph 30 contains a legal conclusion to which no response is required. To the extent that a response is required, the Attorney General asserts that

the text of §407.020, RSMo speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

31. Paragraph 31 contains a legal conclusion to which no response is required. To the extent that a response is required, the Attorney General asserts that that text of the cited case law speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

32. Paragraph 32 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General denies Petitioner's allegations concerning the MMPA's purpose and scope. Respondent further denies that the Attorney General's authority under the MMPA is curtailed by other statutory schemes. The Attorney General denies any remaining allegations in this paragraph.

33. Paragraph 33 contains a legal conclusion to which no response is required. To the extent that a response is required, the Attorney General asserts that the text of §407.040, RSMo speaks for itself and denies any allegation inconsistent therewith. The last sentence in Paragraph 33 is not a properly pleaded allegation and therefore requires no response. To the extent a response is required, the Attorney General admits that Washington University purports to seek the relief described in Paragraph 33, but denies that Petitioner is entitled to any relief whatsoever, and denies any remaining allegations in the paragraph.

## **HEALTH INFORMATION PORTABILITY AND ACCOUNTABILITY ACT**

34. Paragraph 34 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that the texts of 42 U.S.C. §1320d, and 45 CFR §§ 164.502, 164.512 speak for themselves and denies any allegation inconsistent therewith. Respondent further denies Petitioner's allegation that "HIPAA has pre-emptive effect over state laws," which misrepresents the cited case law. The Attorney General denies any remaining allegations in this paragraph.

35. Paragraph 34 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that the text of 45 CFR §§ 164.512 speaks for itself and denies any allegation inconsistent therewith. The Attorney General denies any remaining allegations in this paragraph.

36. Paragraph 36 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General asserts that the text of 45 CFR §§ 164.512 speaks for itself and denies any allegation inconsistent therewith. The Attorney General lacks sufficient information to admit or deny Petitioner's allegations concerning communications with HHS OCR, and thus denies the same. The Attorney General denies any remaining allegations in this paragraph.

37. Paragraph 37 contains a legal conclusion to which no response is required. To the extent that a response is required, the Attorney General asserts that 45 CFR §§ 164.512 speaks for itself and denies any allegation inconsistent therewith. Respondent admits that 45 CFR §§ 164.512(f)(1)(ii)(C) contains the quoted language.

38. Paragraph 38 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General denies the allegations in this paragraph.

39. Paragraph 39 contains legal conclusions to which no response is required. To the extent that a response is required, the Attorney General denies the allegations in this paragraph.

40. Respondent denies any suggestion that the CIDs seek blanket unredacted records.

41. Paragraph 41 contains a legal conclusion to which no response is required. To the extent that a response is required, the Attorney General denies the allegation in this paragraph.

#### **REQUEST TO MODIFY**

42. Paragraph 42 is not a properly pleaded allegation and therefore requires no response. To the extent a response is required, the Attorney General admits that Washington University purports to seek the relief described in Paragraph 42, but denies that Petitioner is entitled to any relief whatsoever, and denies any remaining allegations in the paragraph.

#### **DEMAND FOR JUDGMENT**

The Attorney General requests that the Court deny the Petition to Modify, with prejudice, at Washington University's cost, and that the Court provide all other relief that is proper.

**COUNTERCLAIM PETITION FOR ORDER TO ENFORCE  
CIVIL INVESTIGATIVE DEMANDS No. 23-19, 23-52, and 23-53**

The State of Missouri (the “State”), at the relation of Attorney General Andrew Bailey, brings this Counterclaim Petition for an order to Enforce Civil Investigative Demand Nos. 23-19, 23-52, 23-53. Upon information and belief, the State alleges the following:

**Introduction**

1. At present, the State takes at its word Washington University’s statement that it needs guidance from this Court about its obligations under Missouri law. Petn. ¶ 3. The State has reason to believe that the Federal Government has quietly pressured Washington University not to comply with this lawful, critical investigation, and has used HIPAA as its leverage for that pressure. A court order adjudicating this issue, upholding the CID under Missouri law and ruling that HIPAA does not prohibit compliance with the CID, would resolve any impediment Washington University believes it faces.

2. Gender transition interventions are highly controversial. Countries in Europe such as Sweden, the United Kingdom, Norway, Denmark, and Finland have determined in recent years that there is no solid evidence to support these interventions. Countries across Europe have thus greatly restricted those interventions for minors. For example, after a peer-reviewed, systematic review of the evidence was published in Sweden finding no solid evidence for these interventions, the Swedish health authority determined in February 2022 that “the risks of puberty suppressing treatment with GnRH-analogues [puberty blockers] and

gender-affirming hormonal treatment [cross-sex hormones] currently outweigh the possible benefits.” Exhibit 1. *Care of Children and Adolescents with Gender Dysphoria: Summary*, Socialstyrelsen: The National Board of Health and Welfare 3 (Feb. 2022).

3. Even organizations that support gender transition interventions have acknowledged that the evidence for their position is sparse. For example, Washington University says it relies on guidance promulgated by the Endocrine Society in 2017. But every one of the Endocrine Society’s recommendations with respect to treating adolescents with puberty blockers or cross-sex hormones is based on data that the Endocrine Society conceded is of “low” quality or “very low” quality. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons* 102(11) J. Clinical Endocrinology & Metabolism 3869, 3871–72 (Nov. 2017).<sup>1</sup>

4. This investigation, however, concerns not the debate over whether and when to provide gender transition interventions. It instead concerns whether a clinic used unfair or deceptive practices “in connection with the sale or advertisement” of these interventions.

5. Unfair and deceptive practices are always problematic, but they are especially problematic in this context because the cost is more than economic. Inducing a person to purchase gender transition services through unfair or deceptive practices leads to life-altering physical consequences.

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<sup>1</sup> <https://academic.oup.com/jcem/article/102/11/3869/4157558>.

6. While the alleged benefits of these interventions have yet to be established, their downsides are beyond dispute. Among the most serious consequences, these interventions cause infertility, and puberty blockers interfere with brain development. It is unknown whether brain development ever returns to normal if individuals stop these interventions. The Endocrine Society has acknowledged that “animal data suggests there may be an effect of GnRH analogs [puberty blockers] on cognitive function” and has thus stated “we need more rigorous evaluations of . . . the effects of prolonged delay of puberty in adolescents on . . . the brain (including effects on cognitive, emotional, social, and sexual development).” Hembree, *supra*, at 3874, 3882–83. To date, no such rigorous evaluation has been conducted.

### **Whistleblower Allegations**

7. On February 7, 2023, a longtime Washington University employee, Jamie Reed, submitted a sworn affidavit (“Reed Affidavit”) alleging that the Washington University Pediatric Transgender Center (“Center”) was engaged in serious misconduct relating to gender transition of minors.

8. The State has no reason to question the whistleblower’s credibility. Reed is part of the LGBT community, “came close to medically transitioning [her]self,” is “married to a medically transitioned trans man,” has participated in protests on behalf of LGBT rights, and worked at the clinic for close to five years—at times as its only full-time employee. Exhibit 2, Transcript of Hearing, *Noe v. Parson*, No. 23AC-CC04530, at 500–01 (Aug. 22, 2023).

9. Reed’s public, sworn affidavit alleged (among other things) that the Washington University clinic has been:

- a. Bullying parents into purchasing gender-transition interventions by warning that their children will kill themselves absent these interventions, when the clinic knows the studies do not support that claim. Indeed, a 2021 study by WPATH looking at the evidence was unable to conclude that suicide rates decreased after interventions. Baker, et al., *Hormone Therapy, Mental Health, and Quality of Life Among Transgender People: A Systematic Review*, 5:4 *J. of the Endocrine Soc.*, 1–16, 12 (2021) (emphasis added).<sup>2</sup> Rather, other studies have showed no change in suicide rates following chemical or surgical intervention.
- b. Initiating gender transition procedures without consent.
- c. Administering gender transition procedures after parents revoked consent.
- d. Providing interventions to children who have not received comprehensive mental health assessments and touting these interventions as proven, evidence-based, and life-saving, even though the World Professional Association for Transgender Health—whose standards the clinic professed to follow—has admitted “[t]here are *no studies* of the long-term outcomes of gender-related medical treatments

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<sup>2</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7894249/pdf/bvab011.pdf>



for youth who have not undergone a comprehensive assessment.”

WPATH, Standard of Care 8, at S51 (2022) (emphasis added).<sup>3</sup>

- e. Falsely advertising to the public, parents, and children that patients would be given psychiatric and psychological treatment as part of their care—in order to boost patient volume—only to systematically decline to provide that care after.
- f. Boosting patient volume by falsely advertising compliance with Endocrine Society, World Professional Association for Transgender Health (WPATH), and similar group guidelines while in fact sharply deviating from those guidelines.
- g. Referring or otherwise directing minor patients to irreversible surgical interventions while falsely telling the public and the legislature that “at no point are surgeries on the table for anyone under 18.”
- h. Prescribing cross-sex hormones to children as young as 13 years old despite WPATH guidelines requiring individuals to be at least 16 years old before such interventions.
- i. Prescribing life-altering drugs—including bicalutamide, a drug so risky that other clinics will not use it—without informing patients of their risks.
- j. Pressuring parents into providing consent for medical interventions through coercive and abusive tactics.

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<sup>3</sup> <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>

- k. Actively avoiding knowledge of detransitioners regretting their interventions so that the clinic could decline to inform.
- l. Billing private and public insurance for unnecessary procedures, including by falsifying medical records

A true and accurate copy of the Reed Affidavit is attached hereto as Exhibit 3 and incorporated herein.

10. The New York Times subsequently corroborated many of the allegations in the affidavit. Azeen Ghorayshi, *How a Small Gender Clinic Landed in a Political Storm*, THE NEW YORK TIMES (Aug. 23, 2023).<sup>4</sup>

11. Following receipt of the Reed Affidavit, Attorney General Andrew Bailey issued Civil Investigative Demand No. 23-19 (“CID”) to Washington University to investigate possible violations of the Missouri Merchandising Practices Act (“MMPA”), Mo. Rev. Stat. § 407.020, *et seq.*

12. The statute under which the State issued the CID includes robust privacy protections prohibiting the Attorney General from disclosing any documents except in limited circumstances, such as with consent of the CID recipient. § 407.060, RSMo.

13. Despite initially stating that it would fully comply with the CID, including producing unredacted medical records and allowing the State remote, read-

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<sup>4</sup> <https://www.nytimes.com/2023/08/23/health/transgender-youth-st-louis-jamie-reed.html>.

only access to its medical records system (EPIC), Washington University now is withholding these and other relevant and responsive materials.

14. Pursuant to Mo. Rev. Stat. § 407.090, the Attorney General seeks an order from the Court compelling Washington University to comply with the CID within 20 days.

### **Parties**

15. Andrew Bailey is the Attorney General of the State of Missouri and brings this action in his official capacity on behalf of the State pursuant to Mo. Rev. Stat. Chapter 407.

16. Counterclaim-Respondent Washington University is a private research university located in St. Louis, Missouri. Washington University owns and operates the Washington University School of Medicine. In 2017, the Washington University School of Medicine's divisions of Endocrinology and Adolescent Medicine opened the Center.

### **Jurisdiction**

17. This Court has subject matter and personal jurisdiction over this action under article V, section 14 of the Missouri Constitution.

18. This Court has authority over this action pursuant to Mo. Rev. Stat. § 407.090, which allows the Attorney General to file a petition for order of enforcement of a CID in the trial court of general jurisdiction of a county in which the person served with the CID resides, is found, or transacts business.

## Venue

19. Venue is proper in this Court under Mo. Rev. Stat. § 407.090, which provides that:

Whenever any person fails to comply with any civil investigative demand duly served upon him under section 407.040 or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general . . . may file, in the trial court of general jurisdiction of a county or judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of such civil investigative demand. . . . Whenever any petition is filed in the trial court of general jurisdiction of a county or judicial district under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of section 407.040. . . . Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

20. Venue is proper in this Court because Counterclaim-Respondent Washington University is located in St. Louis City.

## Missouri Merchandising Practices Act

21. Section 407.040 of the MMPA provides, in pertinent part:

When it appears to the attorney general that a person has engaged in or is engaging in any method, act, use, practice or solicitation declared to be unlawful by this chapter or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any such method, act, use, practice or solicitation, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or

physical evidence relevant to the alleged or suspected violation, a civil investigative demand requiring such person to appear and testify, or to produce relevant documentary material or physical evidence or examination at such a reasonable time and place as may be stated in the civil investigative demand, concerning the advertisement, sale or offering for sale any goods or services or the conduct of any trade or commerce or the conduct of any solicitation that is the subject matter of the investigation. Service of any civil investigative demand, notice, or subpoena may be made by any person authorized by law to serve process or by any duly authorized employee of the attorney general.

22. Section 407.070 provides in pertinent part:

At any time before the return date specified in a civil investigative demand issued under section 407.040, or within twenty days after the civil investigative demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the civil investigative demand, stating good cause, may be filed in the circuit court of the county where the parties reside or in the circuit court of Cole County.

### **General Allegations**

23. On February 23, 2023, the Office of the Missouri Attorney General served upon Washington University, through counsel, CID No. 23-19. A true and accurate copy of the CID is attached hereto as Exhibit 4 and incorporated herein.

24. Pursuant to Mo. Rev. Stat. § 407.040, CID No. 23-19 identified the statute of the suspected violation and the general subject matter of the investigation.  
*Id.*

25. Specifically, CID No. 23-19 requests information relevant to whether Washington University—through its agents or employees—has engaged in or is

engaging in merchandising practices declared to be unlawful by Mo. Rev. Stat. § 407.020 with regard to services provided at the Center. *Id.*

26. The return date to produce all requested documentation and information and submit the Certification of Compliance to the Attorney General's Office was no later than 10:00 a.m., March 17, 2023. *Id.*

27. The CID identified a member of the Attorney General's staff to whom documents and information should be produced. *Id.*

28. Following service of the CID, members of the Attorney General's Office held teleconferences with Washington University's counsel on March 2, 2023, and March 9, 2023, to discuss Counterclaim-Respondent's compliance.

29. Washington University responded in part to the CID on March 17, 2023 ("Initial Response"). A true and accurate copy of the Initial Response is attached hereto as Exhibit 5, filed under seal, and incorporated herein.<sup>5</sup>

30. The Initial Response included some written responses, some objections to the Investigative Demand, a limited set of production documents, and a promise of future productions. The response also pledged access to Washington University's EPIC medical records system for the purpose of reviewing materials relevant and responsive to the CID. *Id.* at 4-5. Various individual responses specifically directed the Attorney General's Office to information in EPIC. *See id.* Responses to Request Nos. 6, 24, 25, 27, 31, 46, 58, 63, 64, 67, 77, 78, 84, 104, 109, 123, 130.

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<sup>5</sup> In an abundance of caution, the Attorney General is filing documents received from Washington University under seal.

31. Washington University provided a supplemental response and production on March 24, 2023 (“First Supplemental Response”), which included additional documents and information responsive to the Investigative Demand. A true and accurate copy of the First Supplemental Response is attached hereto as Exhibit 6, filed under seal, and incorporated herein.

32. In the First Supplemental Response, Washington University again promised future production of responsive materials, and directed the Attorney General’s Office to information in EPIC. *See id.* pp. 11, 13, 14, 18, 19, 22, 23. The supplemental production included a spreadsheet titled “Transgender Patient data,” which included various workbooks chronicling patient names, encounters, and medications, among other information. *Id.* pp.13-14. After describing this data, Washington University noted that “[m]ore detail about the specific services provided can be found in the medical records.” *Id.*

33. On April 7, 2023, Counterclaim-Respondent provided a third production of documentary materials (“Second Supplemental Response”), which it alleged were responsive to the CID. The production was delivered by way of a link in an email. For reasons that remain unknown, the files were not successfully downloaded onto the Attorney General’s Office’s servers. By the time the Attorney General’s Office discovered this, the link to download the production had expired. On information and belief, the only redactions applied in this production were those removing attorney-client protected communications.

34. The Attorney General's Office followed up via email with Washington University's counsel on July 21, 2023, outlining certain outstanding discovery issues and lack of compliance with the CID. Included within this email was a request for access to the EPIC system, as Washington University previously promised.

35. To be clear, the State takes very seriously any applicable privacy concerns, as well as the statute that requires confidentiality of materials received in response to a CID. § 407.060, RSMo. The State commits to following the confidentiality requirements imposed by law. *Id.*

36. Medical records in the EPIC system are highly relevant to the State's investigation and are responsive to CID No. 23-19, and, on information and belief, records in the EPIC system contain communications and representations by and between Center employees that directly support the whistleblower allegations.

37. For example, the whistleblower alleged that the clinic fraudulently billed both public and private insurance for unnecessary procedures. *See Exhibit 3 ¶ 85.* That allegation lies squarely within the MMPA, and information relevant to that allegation will appear in the medical records themselves. Indeed, that is likely the *only* place the most pertinent relevant information will be.

38. Similarly, the whistleblower alleged that individuals at the clinic lied to parents about the risk of suicide in order to induce parents into paying for costly, life-altering medications. *Id.* ¶¶ 39, 43 (While the physical consequences are large, the economic consequences are also enormous. A person who begins using cross-sex



hormones often undergoes such large but unstable physical transformations that they must remain on cross-sex hormones for life.)

39. Conversations and disclosures about the risks of intervention compared to nonintervention are likely to appear in medical charts.

40. For example, one such record that Washington University produced shows that a provider repeatedly told a parent that failure to purchase medical intervention could lead their child to suicide. *See* TGC00002342-43. A true and accurate copy of TGC00002342-43 is attached hereto as Exhibit 7, filed under seal,<sup>6</sup> and incorporated herein.

41. Further, on information and belief, records in the EPIC system contain team-meeting notes that demonstrate serious staff concerns (dismissed by Center leadership) about certain patients and whether their symptoms and comorbidities required treatment. *See* TGC00010821 at 1 (“ . . . when we originally started case conference, Jamie was putting a note in each patients [sic] chart.”). A true and accurate copy of TGC00010821 is attached hereto as Exhibit 8, filed under seal, and incorporated herein.

42. On July 31, 2023, at Washington University’s request, members of the Attorney General’s Office held a teleconference with Washington University’s counsel. During that call, Counterclaim-Respondent’s counsel indicated that the April 7, 2023 production would be re-produced the following day. Additionally,

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<sup>6</sup> Portions of Exhibit 7 have been redacted to remove personal health information and contents unrelated to the Counterclaim Petition.

counsel acknowledged the prior promise to provide access to the EPIC system and did not indicate that Washington University was changing its position.

43. On August 7, 2023, following a failure to re-produce the April 7 materials, members of the Attorney General's Office again contacted Washington University's attorneys and requested that the April 7 materials be made available for download. The same day, Washington University counsel provided a production letter, which purported to have a link to access the April 7 production materials. But upon review, the materials were inaccessible. The Attorney General's Office immediately raised this issue with Washington University's counsel. A true and accurate copy of the email communications is attached hereto as Exhibit 9 and incorporated herein.

44. Washington University did not provide any explanation until, on August 10, 2023, its counsel sent the Attorney General a letter outlining various events it believed supported a suspension or termination of further compliance with the CID. A true and accurate copy of the August 10 letter is attached hereto as Exhibit 10, filed under seal, and incorporated herein. The August 10 letter further requested an opportunity to discuss its outstanding commitments under the CID.

45. The Attorney General's Office responded on August 21, 2023. A true and accurate copy of the August 21 response letter is attached hereto as Exhibit 11, filed under seal, and incorporated herein. In its response, the Attorney General's Office indicated that any proper and productive discussion about outstanding requests would first require the production and review of the April 7 materials.

46. The Parties held a teleconference on September 1, 2023, to discuss the August 10 and 21 letters. During this conference, Washington University’s counsel indicated that he would reproduce the April 7 materials, but insisted on first redacting personal health information (“PHI”), which he had never done in any prior production and had never suggested was necessary (or even permitted) in any prior production. The Attorney General’s Office provisionally accepted this condition (reserving the right to later object) for purposes of facilitating production of the materials—materials that were previously produced *without* such redactions. Counsel for Washington University also suggested the Attorney General identify a limited universe of specific documents it wanted to review, to which the Attorney General could not agree.

47. On September 19, 2023, Washington University republished the April 7 production materials. The production was heavily censored, with redactions often spanning full paragraphs or entire pages of responsive and relevant material.

48. In some instances, Washington University’s inconsistent application of redactions across similar documents highlighted the impropriety of the redaction process and the relevance of redacted information to the Attorney General’s MMPA investigation. Specifically, the Attorney General identified emails that were redacted in one case and left unredacted in another. Comparing the two, it was clear to the Attorney General that the redaction was not made to remove PHI, but instead removed information confirming the whistleblower’s allegations about certain “red flag” and “detransition” tracking.

49. On October 3, 2023, the Attorney General's Office wrote a letter to Washington University that outlined its concerns about the heavy redactions and requested re-production the April 7 production without any redactions, as those materials were originally produced on April 7, 2023. A true and accurate copy of the October 3 letter is attached hereto as Exhibit 12, filed under seal, and incorporated herein. The letter also renewed the Attorney General's request for remote, read-only access to the EPIC system, which Washington University previously stated it could and would provide.

50. On October 17, 2023, Washington University responded to the Attorney General's Office with a letter and small production. A true and accurate copy of the October 17 letter is attached hereto as Exhibit 13, filed under seal, and incorporated herein. The letter rejected the request for unredacted reproduction of the April 7 materials and access to the EPIC system. The letter argued, without support, that "HIPAA establishes a higher and more specific standard for authorizing such disclosure" and that "the more stringent privacy requirements of HIPAA preempt state law on the matter." *Id.* at 1. It did not explain how Washington University had previously produced health information in its productions to the Attorney General, if such information was truly protected under HIPAA. Washington University suggested that absent agreement, parties could seek court intervention. *Id.* at 2.

51. On October 25, 2023, the Attorney General's Office wrote a final letter to Washington University. A true and accurate copy of the October 25 letter is attached hereto as Exhibit 14, filed under seal, and incorporated herein. The letter

responded to points raised by Washington University and again outlined the legal basis for compelling disclosure of relevant materials. Specifically, it explained that nothing in HIPAA prohibits producing medical records to the Attorney General in this context.

52. On November 7, 2023, the Attorney General's Office served two additional CIDs—Nos. 23-52 & 23-53—for testimony of two Washington University employees. True and accurate copies of CID Nos. 23-52 & 23-53 are attached hereto, under seal, as Exhibits 15 & 16, filed under seal, respectively, and incorporated herein.

53. Pursuant to Mo. Rev. Stat. § 407.040, CID Nos. 23-52 & 23-53 identified the statute of the suspected violation and the general subject matter of the investigation.

54. Investigative Demand Nos. 23-52 & 23-53 request the testimony of two Washington University employees concerning whether Washington University—through its agents or employees—has engaged in or is engaging in merchandising practices unlawful under Mo. Rev. Stat. § 407.020, with regard to services provided at the Center.

55. CID Nos. 23-52 & 23-53 each identified dates for the employees' testimony at the Attorney General's Office in St. Louis, Missouri.

56. The CIDs identified members of the Attorney General's staff to whom testimony should be produced.

57. Washington University replied in a letter dated November 8, 2023. A true and accurate copy of the November 8 letter is attached hereto as Exhibit 17, filed under seal, and incorporated herein. The letter requested a meeting with the Attorney General's Office and reiterated Washington University's position that "[t]he propriety of providing information to the Attorney General turns in part on the Attorney General's status under HIPAA and the scope of the requested information." *Id.* at 1. Washington University also suggested that compliance with CID Nos. 23-52 and 23-53 would turn on the same issues, and advised that "[i]t may be the case that an orderly submission of the issue to a court is the best way to proceed." *Id.*

58. Following the November 8, 2023 letter, the parties agreed to suspend the testimony of the two Washington University employees until further discussions about compliance could take place.

59. The parties held a final teleconference on November 20, 2023, to discuss the issues outlined in the letters and Washington University's obligations to comply with the CIDs. During that phone call, the parties acknowledged that they were at impasse and mutually agreed that court intervention was required to determine whether Washington University must continue production of medical records and information in response to CID Nos. 23-19, 23-52, and 23-53. The parties agree to resolve this matter through litigation expeditiously.

#### **The State's Investigation Falls Within the MMPA**

60. The thrust of Washington University's petition is an argument that the investigation falls outside the scope of the MMPA. For example, Washington

University asserts that parts of the CID “seek information that is only relevant to standard of care issues.” Petn ¶ 5. But as explained above, the State in fact seeks information that falls squarely within the question whether the clinic engaged in unfair or deceptive practices to induce or encourage purchase of goods and services. The State also denies that the MMPA forbids investigating medical malpractice issues.

61. With respect to the Attorney General, the consumer-protection statute grants extraordinarily broad authority. The words in the statute are “unrestricted, all-encompassing and exceedingly broad.” *Ports Petroleum Co., Inc. of Ohio v. Nixon*, 37 S.W.3d 237, 240 (Mo. banc 2001). “[T]he literal words cover every practice imaginable and every unfairness to whatever degree.” *Id.*

62. The statutory limits cited by Washington University do not apply. For example, Washington University cites § 407.025.3, which states that certain medical malpractice claims do not fall within the MMPA. But that section applies only to private actions, not actions by the Attorney General, and it applies only to damages actions for personal injury or death, not to injunction actions or actions for economic damages or civil penalties. Nothing in that section divests the Attorney General of investigative authority under the MMPA.

### **HIPAA Poses No Barrier to Enforcing the CID**

63. Similarly, while the Attorney General shares Washington University’s belief that guidance from this Court can resolve Washington University’s concerns

about HIPAA, the HIPAA regulations make clear that nothing in HIPAA restricts Washington University from producing the requested documents.

**Counterclaim Count I – Request for Order Enforcing CIDs**

64. The State incorporates all of the allegations contained in Paragraphs 1 through 63 above.

65. Compliance with a CID issued by the Attorney General is required by law. Mo. Rev. Stat. § 407.090.

66. The State has reason to believe that Washington University has engaged in methods, acts, uses, or practices that violate Mo. Rev. Stat. Chapter 407, and that it is in the public interest to investigate. *See* Mo. Rev. Stat. § 407.040.1.

67. CID Nos. 23-19, 23-52, and 23-53 meet all of the statutory requirements of Mo. Rev. Stat. § 407.040.2.

68. CID Nos. 23-19, 23-52, and 23-53 do not run afoul of the statutory prohibitions of Mo. Rev. Stat. § 407.040.3 or of the Missouri or U.S. Constitutions.

69. Washington University has unlawfully failed to comply with CID Nos. 23-19, 23-52, and 23-53 by withholding responsive and relevant information and documentary materials without legal justification.

70. Accordingly, the State is entitled to an order under Mo. Rev. Stat. § 407.090 that commands Washington University (1) to produce responses, documentation, and provide the Attorney General remote, read-only access to the EPIC system under CID No. 23-19 and (2) to produce witnesses for testimony pursuant to CID Nos. 23-52 and 23-53.



WHEREFORE, Counterclaim-Petitioner State of Missouri ex rel. Attorney General Andrew Bailey respectfully requests that this Court issue an order enforcing the CIDs and commanding Washington University to comply with the CIDs' demands within twenty (20) days of the entry of its order, and for any additional relief that is just and proper.

Respectfully submitted,

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Attorney for Respondent

December 7, 2023

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the forgoing was electronically filed on December 7, 2023, using the Court's electronic filing system to be served on all parties of record.

/s/ Joshua M. Divine