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14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 THERESA SWEET, *et al* on behalf of  
17 themselves and all others similarly situated,

18 *Plaintiffs,* v.

19 MITCHELL ZAIS, Acting Secretary of the  
20 United States Department of Education, and

21 THE UNITED STATES DEPARTMENT OF  
22 EDUCATION,

23 *Defendants.*

Case No. 19-cv-03674-WHA

**PLAINTIFFS’ RESPONSE TO THE  
FEBRUARY 5, 2021 ORDER SETTING  
DISCOVERY HEARING, ECF NO. 177**

24 In response to this Court’s Order Setting Discovery Hearing (ECF No. 177), Plaintiffs state  
25 that they have met and conferred with Defendants by e-mail and phone about the Motion to Compel  
26 schedule. Plaintiffs do not object to the Defendants’ proposed amended schedule (ECF No. 179),  
27 which gives Defendants additional time to prepare their responsive briefing and pushes back the  
28 Motion to Compel hearing date to February 24, 2021. The extension of the schedule will serve

1 judicial economy, as it will potentially allow for a related discovery issue to be resolved  
2 simultaneously with Plaintiffs' narrow motion to compel.

3 Yesterday, former Secretary of Education Elisabeth DeVos, represented by counsel for  
4 Defendants in this action, along with private counsel Boies Schiller Flexner LLP,<sup>1</sup> filed a Motion  
5 to Quash the subpoena issued to her by Plaintiffs, *see* ECF No. 172 (directing Plaintiffs to subpoena  
6 "Citizen DeVos"), in the Southern District of Florida.<sup>2</sup> That Motion, attached hereto for the Court's  
7 convenience (Exhibit A), *cf.* Civ. L. R. 3-13 (requiring parties to notify court of pending actions  
8 involving "all or a material part of the same subject matter and all or substantially all of the same  
9 parties as another action"), contains argumentation about the propriety of the discovery ordered by  
10 this Court and overlaps substantially with the pending Motion to Compel.

11 As such, Plaintiffs have requested consent from counsel for Citizen DeVos to transfer the  
12 matter to this Court, which consent has been denied.<sup>3</sup> Plaintiffs' counsel intend to move the  
13 Southern District of Florida, on an expedited basis, to transfer the Motion to Quash to this Court.  
14 If Plaintiffs' Motion to Transfer is granted,<sup>4</sup> the Motion to Quash will then be heard by Your  
15 Honor. Plaintiffs submit that it would likely be most efficient for the Motion to Compel and the  
16 Motion to Quash to be heard at the same time, and they would consent to a further delay of the  
17 Motion to Compel hearing in order to align the scheduling for those two motions.

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20 <sup>1</sup> The attorney representing Citizen DeVos in her personal capacity maintains offices in  
21 Washington, D.C. and Fort Lauderdale, Florida, according to the firm's website. The firm also  
22 has an office located at 44 Montgomery Street, San Francisco, CA.


23 <sup>2</sup> Counsel for Defendants in this action represent that Citizen DeVos will be at her residence in  
24 Vero Beach, Florida on the proposed date of the deposition. The parties have agreed that the  
25 deposition will not take place in person, but rather via remote technology.

26 <sup>3</sup> Counsel for Defendants in this action represent to the undersigned that they are authorized to  
27 convey the consent or non-consent of Citizen DeVos as "the person subject to the subpoena," Fed.  
28 R. Civ. P. 45(f).

<sup>4</sup> "Judges in compliance districts may find it helpful to consult with the judge in the issuing court  
presiding over the underlying case while addressing subpoena-related motions." Fed. R. Civ. P.  
45(f), 2013 Committee Notes.

1 Dated: February 9, 2021

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3 Respectfully submitted,

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