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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Miriam Flores, et al.

Plaintiffs,

vs.

State of Arizona, et al.

Defendants.

No. CV 92-596-TUC-RCC

**ORDER**

Pending before this Court are – (1) Plaintiffs’ Motion for Protective Order (Doc. 932); (2) Defendant Horne’s Motion to Continue (Doc. 936); (3) Defendant Horne’s Motion to Compel (Doc. 938); and Intervenor Defendants’ Motion to Compel and Motion to Bifurcate Trail (Doc. 939). Oral arguments were held on August 18, 2010.

The Court has considered all the pleadings of the parties and the arguments presented in Court. One should start with the premise the that purpose of this ruling is to ensure a just, speedy, and inexpensive determination of every action and proceeding. The most important part of the above goals as the Court sees it is “just.”

In Rule 26, the phrase “unless otherwise stipulated or ordered by the court” is used. In the rule at issue here, that same phrase is also used.

Motion for Protective Order/Motions to Compel

The academic scholars at the center of the parties’ discovery dispute are experts within

1 FED.R.CIV.P. 26(a)(2). The parties have continually referred to them as experts and these  
2 scholars conducted research and wrote articles—at least in part—for purposes of assisting  
3 in this case. As such, Plaintiffs are required under FED.R.CIV.P. 26(a)(2)(B) to disclose not  
4 only the experts’ written reports, but “the data or information considered by the witness in  
5 forming [their opinions].” However, the individual research participants were promised their  
6 anonymity would be preserved and the Court intends to honor that promise.

7 Defendants, therefore, have a right to receive the materials they subpoenaed from the  
8 University of Arizona and Arizona State University, subject to the following conditions—

9 (1) Defendants are not entitled to the names of any individual research participants  
10 nor the names of any university students who conducted site visits.

11 (2) Defendants are entitled to know the identity of the schools and schools districts  
12 included in the research. However, if the school or school district is so small such that  
13 disclosure of that information would necessarily lead to discovery of the name of an  
14 individual participant, then the name of the school or school district shall not be disclosed  
15 to Defendants.

16 (3) Defendants are entitled to review the CDs containing audio files of interviews with  
17 English Language Coordinators; currently in the University of Arizona’s possession.  
18 However, the CDs must be disclosed in a way that protects the identity of the Coordinators.

19 (4) Defendants are also entitled to review the electronic surveys completed for the  
20 Rios-Aguilar report in a format that allows the Defendants to review individual participant  
21 responses, keeping in mind the parameters the Court has laid out with respect to  
22 identification of individual participants. If disclosure is possible, Defendants are also entitled  
23 to know the schools and schools district from where the electronic survey responses were  
24 received. However, if the school or school district is so small such that disclosure of that  
25 information would necessarily lead to discovery of the name of an individual participant,  
26 then the name of the school or school district shall not be disclosed to Defendants.

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28 Motion to Continue/Motion to Bifurcate Trial

1 The Court has already set aside three weeks for this hearing. The Court is cognizant  
2 of the volume of the materials about to be disclosed to Defendants at this late date and the  
3 fact that they may not be able to complete the hearing within the dates reserved by the Court.  
4 However, the Court is prepared to deal with all of the witnesses that have been deposed thus  
5 far and have them testify at the hearing, beginning on September 1, 2010. After the parties  
6 have had a chance to digest the records, or at least attempt to digest the records, the Court is  
7 amenable to discussing a schedule for any remaining witnesses to testify.

8 Based on the foregoing, **IT IS HEREBY ORDERED:**

9 (1) Plaintiff's Motion for Protective Order (Doc. 932) is **granted in part.**

10 (2) Defendant Horne's Motion to Continue (Doc. 936) is **denied.**

11 (3) Defendant Horne's Motion to Compel (Doc. 938) is **granted in part.**

12 (4) Intervenor Defendants' Motion to Compel and Motion to Bifurcate (Doc. 939) is  
13 **granted in part.**

14 **IT IS FURTHER ORDERED** that as a protective measure, should the names of any  
15 research participants be inadvertently disclosed, their names are not to be shared with anyone  
16 other than the attorneys in this case.

17 DATED this 19th day of August, 2010.

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21 Raner C. Collins  
United States District Judge

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