

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

PEN AMERICAN CENTER, INC.,
SARAH BRANNEN, BENJAMIN
GLASS, on behalf of himself and his
minor child, GEORGE M.
JOHNSON, DAVID LEVITHAN,
KYLE LUKOFF, ANN
NOVAKOWSKI, on behalf of herself
and her minor child, PENGUIN
RANDOM HOUSE LLC, SEAN
PARKER, on behalf of himself and
his minor child, ASHLEY HOPE
PÉREZ, and CHRISTOPHER
SCOTT SATTERWHITE, on behalf
of himself and his minor child,

CASE NO.: 3:23-CV-10385-TKW-ZCB

Plaintiffs,

vs.

ESCAMBIA COUNTY SCHOOL
BOARD,

Defendant.

**DEFENDANT’S MOTION TO COMPEL PLAINTIFF,
PEN AMERICAN CENTER, INC., TO PROVIDE
BETTER RESPONSES TO FIRST REQUEST FOR PRODUCTION**

Defendant, Escambia County School Board (“Board”), pursuant to Federal Rule of Civil Procedure 37(a) and Local Rule 26.1(D), moves the Court to compel Plaintiff, PEN American Center, Inc. (“PEN”) to provide better responses to Request

Numbers 1 and 2 of the Board’s First Request for Production. In support, the Board states:

I. BACKGROUND

1. This case arises from the Board’s decisions to either remove or restrict access to certain books from the libraries in the Escambia County School District (“District”), and Plaintiffs’ subsequent challenge to these actions. [D.E. 219]. Plaintiffs allege violations of their First Amendment rights based on purported viewpoint discrimination, violation of an alleged right to receive information in public schools, and their due process rights based on the Board’s actions. *Id.* at ¶¶ 228–48.

2. On February 8, 2024, the Board propounded its First Request for Production on PEN. A copy is attached as **Exhibit A**. On April 10, 2024, PEN provided its objections and responses to that discovery. A copy is attached as **Exhibit B**.

3. Following that request, PEN has produced documents on a rolling basis. The produced documents have not been designated as responsive to any particular request for production and the Response to the Request for Production has not been supplemented to identify responsive documents.

4. On August 1 and 2, 2024, the Board deposed PEN’s corporate representative, Summer Lopez. As this Court is aware, there was an issue with a

document that was provided during the deposition which was then clawed-back on the basis of the attorney-client and work product privileges. *See* D.E. 110, 116, 140.

5. During the deposition, Ms. Lopez was asked questions about the books at issue, specifically the basis for PEN's assertion that the Board voted to remove or restrict these books on the basis of viewpoint. In order to answer these questions, Ms. Lopez referred to a document produced as PLAINTIFF005672.¹ By way of example, her testimony was as follows:

Q All right. Can you tell me what *Lucky* is about?

A Yes. This is the Alice Sebold's -- let me just confirm by looking at the reviews, but I believe that this one is also an experience of a young woman having experienced sexual assault.

Q And, just for the record, you're looking at your spreadsheet, Bates stamped 5672?

A Correct. And I'm now looking at the challenge form. Yes, to the best of my recollection, this one is about sexual assaults. A young woman's experience of that and how she came through it.

Q And what type of viewpoint does PEN allege is being discriminated against in *Lucky*?

A I think this is another example of, I think, sexual assault being conflated with sort of titillating sexual content. It

¹ This document is *Defendant's* Reconsideration Spreadsheet with color coding, presumably added by Plaintiffs. Plaintiffs marked this document, along with several of the other documents referenced in this Motion as Confidential pursuant to the parties' Stipulated Confidentiality Order. [D.E.79]. Defendant will separately file Confidential documents under seal.

also describes the purpose that the media, in the challenge form as sexually deviant, and I'm not sure if it's sexually deviant violence or sexually deviant and violence, which again, seems to misunderstand the purpose of telling a story of the experience of sexual assault and survival.

Q Aside from the challenge form, does PEN have any other bases on which to assert that the Board engaged in viewpoint discrimination with regard to its removal of Lucky?

A I can't say that there might not be other factors.

Q Well, I haven't had to say this yet today, but you are the Corporate Representative of PEN, who has been designated to testify as to these issues, so what do you mean by that answer?

A I mean, that there is other research and analysis that the team has done over time to look at this, but like I say, we -- as I said, we understand that the challenge form is the basis for why these -- that the challenge form is certainly a factor that was taken into consideration.

Q Okay. So, as you sit here today, as the 30(b)(6) witness, can you point me to any other basis on which PEN bases its contention that *Lucky* was removed based upon viewpoint discrimination?

A I think the other analysis in the spreadsheet -- I think I would -- no, I don't think I have a specific document.

Q Okay. And I don't need a specific document. I'm just trying to understand every basis on which PEN is asserting that *Lucky* was removed based on viewpoint discrimination. So, is there anything else that we haven't discussed?

A No, I don't think so, on its face.

* * *

Q Okay. As to *Lucky*, does PEN know whether it contains sexual conduct -- excuse me, sexual content that may be inappropriate for certain ages?

A I can't say.

See excerpts from Deposition Transcript of Summer Lopez, attached as **Exhibit C**, at 337:20 - 339: 22; 341:11-14. She then testified as to another book:

Q Okay. So, what is the basis for PEN's allegation that in restricting *The Nowhere Girls* to 11th and 12th grade, that the Board engaged in viewpoint discrimination?

A I believe it's, I would say that, it is targeting, again, discussions of sexual assaults, and particularly a sort feminist viewpoint around responding to that and countering misogynistic rape culture.

Q And aside from the challenge forms and any information that you just read regarding the District Material Review's Committee, is there any other basis on which PEN relies for its contention that the Board engaged in viewpoint discrimination with regard to *Nowhere Girls*?

A Well, again, the fact that they ignored the recommendations of the committee.

Q Right, and when I -- yes, anything else?

A I would say those are the main things.

Q Does PEN know whether *The Nowhere Girls* contains sexual conduct that may be inappropriate for certain ages?

A I don't know.

Id. at 345:22 - 346:19. And, as to the book *More Happy Than Not*:

Q. . . . Is the basis for PEN's contention that the District engaged in viewpoint discrimination, is that the challenge form?

A And their decision to restrict it, yes, that's the primary source.

Q Anything else?

A No, I don't believe this one went to a community, or Committee Review.

Id. at 356:15-23.

6. At no point did Ms. Lopez reference or refer to a “content analysis” spreadsheet or document to be able to answer the questions posed.

7. This is contrasted by Jonathan Friedman, who served as PEN’s corporate representative for the updated deposition which occurred on October 14, 2025. In contrast to Ms. Lopez, Mr. Friedman testified that he reviewed a “content analysis” spreadsheet in preparation for the PEN corporate representative deposition. *See* excerpts from Deposition Transcript of Jonathan Friedman, attached as **Exhibit D**, at 9:21-10:7. And in contrast to Ms. Lopez, Mr. Friedman testified that the “content analysis” spreadsheet informed as to the particular viewpoint that PEN asserted was being discriminated against when the Board voted to remove the books at issue in this case. *Id.* at 112:24-131:21.

Q (By Ms. Duke) Okay. And to be clear, for all the removed books, we should look at the content analysis from PEN America to help determine the reason the

School Board members voted to remove any particular book?

A Yeah, I think you -- I think that is one source of what we would be looking at for understanding and categorizing the content of books. It's not the sole source as there are also considerations of what's on the challenge forms and what are the comments made by the School Board members, in a variety of the forms.

Id. at 134:2-13.

8. The “content analysis” spreadsheet is an internal document that PEN uses in its work to analyze the books that have been removed around the country in which PEN “categorized the content of the books, according to a range of variables”. *Id.* at 10:18-25. He testified the “content analysis” spreadsheet is a “living document reflective of coding of the content of books that have been banned in PEN America’s research, and looking at certain categories for different books, that we analyze the content of the books according to.” *Id.* at 17:11-20. The “content analysis” spreadsheet is reflective of the researchers of PEN’s evaluation of the content of the books as well as a review of various published information and reviews. *Id.* at 22:6-23:10. PEN has six persons working on this spreadsheet. *Id.* at 27:3-13. The spreadsheet is maintained on a Google drive. *Id.* at 78:5-8. Mr. Friedman also testified that PEN began tracking books in 2022. *Id.* at 77:24-78:4.

9. The “content review” spreadsheet was not produced to the Board until October 6, 2025, as PLAIN009078. One day later, on October 7, 2025, PEN

supplemented its responses to the Board's Second Set of Interrogatories to specifically identify the content analysis spreadsheet as well as another spreadsheet (PLAIN006711) which was produced on October 23, 2025, following the deposition of Summer Lopez.² Specifically, the supplemental interrogatory response stated:

INTERROGATORY NO. 1:

For each book listed in Exhibit 12 to the Second Amended Complaint (¶ 34), please state the specific content or message of the book for which you contend each Board Member objected when that member voted to remove the book. If your response is different for each board member, then identify the specific content or message by Board Member.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1

PEN states that it has produced non-privileged documents under Rule 33(d) of the Federal Rules of Civil Procedure through which Defendant may ascertain further information responsive to this Interrogatory, including information regarding PEN's assessment of each book's plot, characters, settings, themes, and expressed political ideology, among other information, that PEN asserts are the bases on which Defendant, or another actor to which Defendant impermissibly delegated authority, discriminated when removing or restricting the book. See, e.g., PLAIN0006711, PLAIN0009078, PLAIN0009079.

² PLAIN0009079 refers to a methodology for the content analysis spreadsheet, which was also produced on October 6, 2025.

10. PEN's reliance on this "living document" to indicate the viewpoints it claims were discriminated against was not made known until October 7 and 14, 2025 when PEN supplemented its discovery responses and Mr. Friedman testified as such. Prior to that point in time, PEN's previous representative, Summer Lopez, relied on a document focused on the challenge forms and generally referred to an "index" related to PEN's yearly Banned in the USA Report. **Ex. C** at 90:20-92:8.

11. Following Mr. Friedman's deposition, counsel for the Board requested PEN supplement its responses to the Requests for Production to produce all versions of this "content analysis" spreadsheet, prior iterations, communications between the researchers regarding the spreadsheet, their notes, the documents relied upon by the researchers in forming their opinions as to the books' content, and documents that were created with the data contained in these spreadsheet.

12. To date, PEN has only agreed to produce prior versions of PLAIN009078, which counsel claims was first created in June 2025, despite the reliance on PLAIN006711, and the fact that this document was produced in June 2024 – well over a year before the "content analysis" spreadsheet was purportedly first created.

II. ARGUMENT

Federal Rule of Civil Procedure 26(b)(1) states that "[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim

or defense and proportional to the needs of the case...” Rule 34 states that “[t]he party to whom the request is directed must respond in writing within 30 days after being served.”

Rule 37(a)(3)(B)(iv) provides in pertinent part that “A party seeking discovery may move for an order compelling an answer, designation, production, or inspection . . . if . . . a party fails to produce documents . . . as requested under Rule 34. If the motion is granted, the “court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses in making the motion, including attorney’s fees.” Fed.R.Civ.P. 37(a)(5).

The two requests at issue are:

REQUEST NO. 1: Documents supporting your allegation that Defendant removed and restricted books from public school libraries “based on its disagreements with the ideas expressed in those books.”

RESPONSE TO REQUEST NO. 1:

PEN objects to this Request because the term “removed and restricted books” is vague and ambiguous. PEN also objects to this request because it is overly broad and unduly burdensome. PEN also objects to this Request to the extent that it (1) seeks documents that are not “relevant to any party’s claim or defense and proportional to the needs of the case” within the meaning of Rule 26(b)(1), (2) seeks documents that are protected by the attorney-client privilege or work-product doctrine, or (3) seeks documents that are already in Defendant’s possession, custody or control or publicly available. Subject to and

without waiving the foregoing general and specific objections, PEN directs Defendant to the documents attached to and/or referenced in the Amended Complaint, as well as the documents referenced and linked in the following spreadsheet maintained by Defendant:

<https://docs.google.com/spreadsheets/d/1hv6Wtu55zY3t5bmbksY2ie7Q-L3zAQdjrtFh4duLC4/edit#gid=1471224625>

REQUEST NO. 2: Documents supporting your allegation that Defendant ordered the “district-wide removal of books based on the openly ideological, political, and discriminatory views of a small minority”.

RESPONSE TO REQUEST NO. 2:

PEN objects to this request because it is overly broad and unduly burdensome. PEN also objects to this Request to the extent that it (1) seeks documents that are not “relevant to any party’s claim or defense and proportional to the needs of the case” within the meaning of Rule 26(b)(1), (2) seeks documents that are protected by the attorney-client privilege or work-product doctrine, or (3) seeks documents that are already in Defendant’s possession, custody or control or publicly available. Subject to and without waiving the foregoing general and specific objections, PEN directs Defendant to the documents attached to and/or referenced in the Amended Complaint, as well as the documents referenced and linked in the following spreadsheet maintained by Defendant: <https://docs.google.com/spreadsheets/d/1hv6Wtu55zY3t5bmbksY2ie7Q-L3zAQdjrtFh4duLC4/edit#gid=1471224625>

First, these boilerplate objections should be ignored. “The law in the Eleventh Circuit makes clear that boilerplate discovery objections are tantamount to no objection being raised at all and may constitute a waiver of the discovery being

sought.” *Rivera v. 2K Cleveland, LLC*, No. 16-21437-Civ, 2017 WL 5496158, at *4 (S.D. Fla. Feb. 22, 2017). The Court may overrule such objections on this basis alone. *See* Fed. R. Civ. P. 33(b)(4) and 34(b)(2)(B); N.D. Fla. Loc. R. 26.1(C) (“Boilerplate objections are strongly disfavored.”); *see also* *FDIC v. Brudnicki*, 291 F.R.D. 669, 674 n.4 (N.D. Fla. 2013) (“[T]he form boilerplate objections shall not be considered by the Court and are nullity.”); *Walton Constr. Co., LLC v. Corus Bank*, No. 4:10cv137, 2012 WL 13029592, at *1 (N.D. Fla. Apr. 18, 2012) (rejecting boilerplate objections as “meaningless”).

Second, PEN’s practice of providing discovery responses “subject to” or “without waiving” its objections is improper. *Ellis v. Pilot Travel Centers LLC*, No. 4:19CV219-MW/CAS, 2019 WL 13198255, at *2 (N.D. Fla. Sept. 26, 2019).

Such a response preserves nothing. Further, it leaves [the Board] uncertain as to whether the discovery request (as propounded) has actually been fully answered, whether the response related only to the request as unilaterally narrowed by [Plaintiff], and whether [Plaintiff] is withholding any responsive materials. The proper practice is to state (1) whether documents are being provided in response to the request and identify those documents by sequential number or category, and (2) whether any responsive documents are being withheld, and if so the specific legal basis for that objection. *See* Fed. R. Civ. P. 34(b)(2)(C) (objection must “state whether any responsive materials are being withheld on the basis of that objection.”).

Id.

To date, other than the hyperlinked document, no other documents have been

identified as responsive to these requests for production nor has PEN identified which documents are being withheld on the basis of its objection.

Third, following PEN's October 7, 2025 supplementation of its interrogatory responses and Mr. Friedman's deposition on October 14, 2025, it is evident that there are responsive documents that were not produced. Other than seventeen prior versions of PLAIN009078, which were produced on October 24, 20025, PEN has refused to produce prior versions of other iterations (such as PLAIN00671) or the source document that predated PLAIN009078 and the iterations of that document, the communications concerning the "content analysis" spreadsheet, the researchers' notes, and the documents relied upon by the researchers in forming their opinions as to the particular viewpoint and content of the book.

And, because of the objection, the Board is uncertain whether other responsive documents are being withheld. For example, in responding to questions regarding the basis for PEN's assertion that the Board voted to removed books based on disagreement with a books' content, Mr. Friedman made reference to information that "has been published in the news." **Ex. D** at 105:22-106:19. The "news" relied upon by PEN has not been produced (or identified as responsive to Requests 1 and 2). Further, Mr. Friedman testified that one of the sources of information to support its allegation that the Board voted to remove books based on disagreement with the viewpoint was based on reliance on other school districts who removed these books

based on ideological objections. **Ex. D** at 114:15-117:6. But, the documents indicating the source for this allegation – specifically that these books were removed in other school districts on the basis of an ideological objection – have not been produced. The Board is left to wonder what other documents have not been produced and are being withheld on the basis of PEN’s boilerplate objections.

Fourth, to the extent this Court wants to give any weight to PEN’s boilerplate objections, those objections should be summarily rejected. The at-issue-discovery seeks information about the books at issue in this case; therefore it is impossible to understand how these requests do not seek documents “relevant to any party’s claim or defense.” Further, PEN has produced no affidavit or evidence supporting its burdensome objections. And, the proportionality objection is not well-taken considering Plaintiffs have requested, and the Board agreed as a form of compromise, for the Board to run over 245 search terms over 65 custodians, resulting in the review of over 150,000 emails, simply to satisfy their refrain that communications concerning the books at issue in this case are relevant. The Board requests the same level of diligence from PEN that PEN requested of it. Likewise, following a motion to compel, the Board agreed to produce monthly versions of its own spreadsheet – which is also maintained on a Google Drive – to satisfy Plaintiffs’ curiosity as to all prior versions. PEN cannot complain now that a similar request

that it produce prior monthly versions of this Google documents is somehow not proportional.

* * *

PEN waited until the conclusion of this case to identify a key document as the source of its allegations as to viewpoint discrimination. Now, PEN complains that it is too late to supplement discovery and it would be too burdensome to comply with the initial discovery request. The Board should not be prejudiced simply because PEN hid the ball until the end of the case. The Board is entitled to responsive, non-privileged documents to Request Numbers 1 and 2 as outlined above. The Board has identified documents it believes are responsive but were not produced, but because PEN has refused to indicate which documents are being withheld on the basis of the objection, the Board is left guessing as to what else remains.

Likewise, because these documents were not produced before the updated deposition of PEN's corporate representative, the Board reserves the right to re-depose PEN on these newly produced documents.

WHEREFORE, Defendant, Escambia County School Board, asks for an order from this Court overruling PEN's objections, compelling PEN to provide full and complete responses to Request for Production Numbers 1 and 2, including identification of the documents produced which are responsive to these requests, and for any and all further relief this Court deems just and proper.

**CERTIFICATE IN ACCORDANCE WITH
LOCAL RULE 7.1(B) AND RULE 37(a)(1)**

The undersigned certify that they have conferred with Plaintiffs' counsel via videoconference on October 14, 2025, and October 24, 2025, as well as through numerous e-mail communications discussing the issues, in an effort to resolve the discovery disputes referenced in the above motion, and counsel have been unsuccessful in their efforts to resolve said disputes.

CERTIFICATE OF WORD COUNT

The undersigned certify that this Motion complies with the word count limitation set forth in Local Rule 7.1(F) because it contains 3,487 words, excluding the parts exempted by said Local Rule.

Respectfully submitted,

/s Samantha C. Duke

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 29, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Kristy L. Parker at kristy.parker@protectdemocracy.org; Shalini Goel Agarwal at shalini.agarwal@protectdemocracy.org; Kirsten Elizabeth Fehlan at fehlan@ballardspahr.com; Lynn Beth Oberlander at oberlanderl@ballardspahr.com; Paul Joseph Safier at safierp@ballardspahr.com; Ori Lev at ori.lev@protectdemocracy.org; Goldie Fields at fieldsg@ballardspahr.com; Facundo Bouzat at bouzatf@ballardspahr.com; Matthew Kussmaul at kussmaulm@ballardspahr.com; Amy Bowles at amy.bowles@protectdemocracy.org and Michael McDonald at mcdonaldm@ballardspahr.com (Counsel for Plaintiffs).

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