

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

PEN AMERICAN CENTER, INC., et al., Case No. 3:23cv10385-TKW-ZCB

Plaintiffs,

v.

ESCAMBIA COUNTY SCHOOL
BOARD,

Defendant.

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION TO COMPEL BETTER RESPONSES TO
DISCOVERY**

Plaintiffs PEN American Center, Inc. ("PEN") and Penguin Random House LLC ("PRH" and, together with PEN, "Plaintiffs") respectfully submit this Memorandum of Law in Opposition to Defendant Escambia County School Board's (the "Board" or "Defendant") Motion to Compel Better Responses to Discovery (the "Motion").

INTRODUCTION

Near the close of discovery, the Board served Plaintiffs with a total of 2,292 requests for admission and an interrogatory with over 900 parts. Not only are these requests unduly burdensome and voluminous, but they seek information that is either irrelevant or is already in the Board's possession. These requests are not designed to

acquire information pertinent to the Board’s defense, but to harass Plaintiffs. After Plaintiffs timely objected to these requests for admission and the interrogatories, the Board filed the pending Motion to Compel Better Responses (ECF 241.)

The Board’s requests for admission demand Plaintiffs “admit they have no factual support” for their allegation the Board engaged in viewpoint discrimination in selecting books for removal or restriction; the Board seeks separate admissions for each Board member and each book at issue.¹ Setting aside the absurd volume of these requests, the information sought is already in the Board’s possession. Plaintiffs have explained that evidence of viewpoint discrimination appears in documents produced by the Board—including, for example, the challenge forms that were a key basis for the Board’s removal decisions. Moreover, the Board seeks these admissions before Plaintiffs have had the opportunity to depose the Board members, since the Board members have appealed the Court’s ruling that its removal decisions are not protected by legislative privilege.

As for the 966-part interrogatory (“Interrogatory No. 1”), which was served on both PEN and PRH, the Board demands that Plaintiffs “state the specific content or message of [every book at issue] for which [Plaintiffs] contend each Board

¹ Indeed, for each book and each Board member, the Board issued *three separate requests*, which seek admissions that Plaintiffs “have no factual support for the allegation” that the member voted to remove the book based on, respectively, (1) “an ideological objection”; (2) “disagreement with [the book’s] message”; and (3) “viewpoint discrimination.”

Member objected when that member voted to remove the book”—again seeking distinct responses on a member-by-member basis. In other words, the Board asks that Plaintiffs provide their own assessment of the Board members’ motivations in removing or restricting particular books. This is irrelevant. The record contains evidence, including the challenge forms, bearing on the Board’s reasons for selecting books for removal. Plaintiffs’ own beliefs as to the “specific content or message” to which each Board member objected have no evidentiary value. In addition, as noted above, the Board continues to oppose Plaintiffs’ efforts to depose its members; while Plaintiffs may have the chance to ask the Board members to explain their thinking, this cannot happen until after the Board members’ appeal is resolved.

Notwithstanding the unduly burdensome and irrelevant nature of the Board’s requests, Plaintiffs have made a good-faith effort to avoid a discovery dispute. After the Board filed its Motion, Plaintiffs offered the Board a sample of a chart that would identify, as to each book at issue, a list of the bases upon which Plaintiffs believe the Board may have discriminated, with exemplary supporting citations. Plaintiffs told the Board they would create and produce a complete version of the chart if the Board would agree to withdraw its pending Motion. Although the Board’s counsel admitted “the [sample] chart looks promising,” the Board demanded Plaintiffs provide the full chart before the Board would decide whether to withdraw the Motion. This would obligate Plaintiffs to undertake a time-consuming project with no assurance that the

Board would accept the completed chart as sufficient.

The Board's Motion, which seeks to compel Plaintiffs to respond to thousands of discovery requests, should be denied. All the information sought by the Board is in its own possession, irrelevant, duplicative, and/or premature. Plaintiffs have made concerted efforts to satisfy the Board, and the Board has unreasonably rebuffed these efforts. It is therefore clear that the Board is attempting to harass Plaintiffs and abuse the discovery process. The Court should not condone this conduct.

BACKGROUND

On August 27, 2025, the Board served its Second Set of Interrogatories to Plaintiff PEN American Center, Inc., its Second Set of Interrogatories to Plaintiff Penguin Random House, LLC (together, the "Second Interrogatories"), its Second Set of Requests for Admission to Plaintiff PEN American Center, Inc., and its Second Set of Requests for Admission to Plaintiff Penguin Random House, LLC (collectively, the "Discovery Requests"). (ECF 241-1, 241-2, 241-5 & 241-6.) Plaintiffs timely responded to the Second Interrogatories and Requests for Admission on September 26, 2025. (Declaration of Michael R. McDonald (hereinafter "McDonald Decl."), ¶ 9, Exs. 1 & 2; ECF 241-3 & 241-4.) Plaintiffs also supplemented their responses to the Second Interrogatories and Requests for Admission on October 7, 2025. (McDonald Decl., ¶ 10.) The supplemental responses further identified documents and other evidence produced in discovery and available

to all parties that Plaintiffs state support their positions with respect to the claims in the Second Amended Complaint. (*Id.*)

On October 14, 2025, following a discussion at the conclusion of the third day of PEN's corporate deposition, Plaintiff restated its objection to providing further information in response to the Requests for Admission and Second Interrogatories but offered, as a good faith compromise, to revisit the issue once the dispute as to whether the individual members of the Board could be deposed was resolved. (*Id.*, at ¶ 11, Ex. 3.) The Board did not respond. (*Id.*, at ¶ 13.)

As ordered by the Court, the parties met and conferred on October 24, 2025, at 9:00 a.m. ET to attempt to resolve the issues raised in the Board's Motion. (*Id.*, at ¶ 14.) Although Plaintiffs maintained their stated objections to the Second Interrogatories and Requests for Admission, in a further good faith effort to compromise and avoid consuming more of the parties' and the Court's resources and time, and in an attempt to resolve the Motion, Plaintiffs agreed to produce a chart to the Board, which identifies for each of the 161 at-issue books: the viewpoints, ideologies, and/or themes that Plaintiffs contend motivated the Board's decisions to remove or restrict the book; non-exhaustive examples of documents produced in discovery or that are otherwise publicly available and that support Plaintiffs' positions; and other relevant information. (*Id.*, at ¶ 15.) Plaintiffs indicated that the information in this chart would supplement their answers and responses to the

Second Interrogatories and Requests for Admission. (*Id.*)

Because of the significant burden associated with creating such a chart, and because of the Board's reluctance to state whether the proposed chart would address their concerns, Plaintiffs offered to provide the Board with a sample chart, including the agreed-upon information, for six of the at-issue books. (*Id.*, at ¶ 16.) If the Board agreed, after reviewing the sample chart, to withdraw its Motion, Plaintiffs stated that they would provide the information for the remaining at-issue books. (*Id.*)

On October 27, 2025, Plaintiffs produced their sample chart to the Board. (*Id.*, at ¶ 17, Exs. 3 & 4.) At the time the sample chart was produced, Plaintiffs were only able to represent that the proposed chart would supplement PEN's answers and responses to the Second Interrogatories and Requests for Admission, but Plaintiffs subsequently confirmed that the proposed chart would supplement PRH's answers and responses as well. (*Id.*) Plaintiffs therefore updated the sample chart to include information to that effect. (*Id.*, at ¶ 17, Exs. 3 & 5.)

Upon receiving Plaintiffs' sample chart, the Board rejected Plaintiffs' offer of compromise and, instead, insisted that that Plaintiffs compile and produce the information in the chart for all 161 at-issue books before the Board would *consider* withdrawing its Motion to Compel. (*Id.*, at ¶ 18.)

Despite, and without waiving, their objections, Plaintiffs remain willing to produce a chart with similar information for all 161 at-issue books. (*Id.*, at ¶ 19.)

ARGUMENT

I. LEGAL STANDARD.

Rule 37(a) of the Federal Rules of Civil Procedure and Rule 26.1(D) of the Local Rules of this Court permit a party to move for an order compelling discovery if the party upon whom discovery is served fails to make disclosure or discovery as required by the Federal Rules of Civil Procedure. Fed. R. Civ. P. 37(a)(3)(B); N.D. Fla. R. 26.1(D). As is relevant to the Board's Motion, Rules 33 and 36 of the Federal Rules of Civil Procedure permit a party to serve on any other party written interrogatories and written requests for admission of truth related to facts, the application of law to fact, opinions about either, or the genuineness of described documents, respectively. Fed. R. Civ. P. 33(a) & 36(a)(1).

The right to request information, whether through interrogatories or requests for admission, however, is not absolute. For example, a party is not permitted to obtain discovery on any matter that is protected by privilege or that is disproportionate to the needs of the case when considering the parties' access to the information and whether the burden or expense of the requested discovery outweighs its benefit. Fed. R. Civ. P. 26(b)(1); *see also* Fed. R. Civ. P. 26(b)(2)(C) (stating that the Court must limit discovery if it is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive . . . or the proposed discovery is outside the scope permitted by Rule 26(b)(1).").

II. THE BOARD’S MOTION TO COMPEL SHOULD BE DENIED.

Through its Motion, the Board contends that Plaintiffs’ objections to the Requests for Admission and Interrogatory No. 1—namely, that they are an abuse of the discovery process, unduly burdensome, and premature—should be overruled, and that the Court should compel Plaintiffs to “provide full and complete discovery responses.” (ECF 241 (hereinafter “Def. Mtn.”) at 3, 22–24, 26.) But the Board’s contention is inaccurate and conflicts with applicable law. Accordingly, the Court should deny the Board’s Motion and order the Board to pay Plaintiffs their reasonable attorneys’ fees and costs incurred in opposing the Motion.

A. Defendant’s Requests for Admission and Interrogatory No. 1 Are an Abuse of the Discovery Process.

The Board has served 2,292 requests for admission; 357 of these are directed to PRH, and 1,935 are directed to PEN. It also demands that Plaintiffs each respond to Interrogatory No. 1, which contains more than 900 parts. These demands are an abuse of the discovery process. The Board is improperly attempting to use the Requests for Admission as a weapon, rather than as a tool to narrow issues for trial. The 966-part interrogatory, which was served on both PEN and PRH, is an end-run around the strict numerical limit imposed by Rule 33. These abuses will be discussed in turn.

1. Defendant’s Improper Use of Requests for Admission.

“Rule 36 is a time-saver, designed to expedite the trial and to relieve the

parties of the cost of proving facts that will not be disputed at trial.” *Perez v. Miami-Dade County*, 297 F.3d 1255, 1268 (11th Cir. 2002) (internal quotation marks and citations omitted) (emphasis in original); *see also JCW Software, LLC v. Embroidme.com, Inc.*, 2011 WL 2149062, at *2 (S.D. Fla. May 31, 2011) (“Rule 36 requests for admission are not meant to be a discovery device.”); *Point Blank Solutions, Inc. v. Toyobo Am., Inc.*, 2011 WL 742657, at *3 (S.D. Fla. Feb. 24, 2011) (stating that requests for admission are “intended to weed out issues ‘which the requesting party will doubtless be able to prove[]’” (quoting *Pickens v. Equitable Life Assur. Soc. of U.S.*, 413 F.2d 1390, 1393–94 (5th Cir. 1969))).

When a party . . . uses the rule to harass the other side or . . . with the wild-eyed hope that the other side will fail to answer and therefore admit essential elements . . . , the rule’s time-saving function ceases; the rule instead becomes a weapon, dragging out the litigation and wasting valuable resources.

Perez, 297 F.3d at 1268.

The Requests for Admission cannot be construed as an attempt by the Board to “expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial[.]” *See id.* Through its 357 requests for admission to PRH and 1,935 requests to PEN, the Board has asked Plaintiffs to admit that they do not have factual support for the claim that the Board Members voted to remove challenged books based on ideological objections, disagreements with messages, and viewpoint discrimination. (*See, e.g.*, ECF 241 at 5–7.) Whether the facts in

Plaintiffs' possession are sufficient to support their claim that the Board Members' decision to remove certain books based on viewpoint discrimination, however, is a legal question for the Court to determine at summary judgment. *See, e.g., Pernell v. Florida Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218, 1235 (N.D. Fla. 2022) (citing *Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994)).

The only plausible reasons for the Board serving 2,292 requests for admission on Plaintiffs are: (i) the Board hoped that Plaintiffs would be unable to timely respond to the Requests for Admission and, therefore, admit that they cannot prove essential elements of their claims; and (ii) the Board sought to harass, oppress, or unduly burden Plaintiffs with the sheer volume of requests for admission. Both of these constitute an abuse of the discovery process. Fed. R. Civ. P. 26(1)(b)(2)(C)(ii); *Perez*, 297 F.3d at 1268 (stating that the purpose of Rule 36 is frustrated when a party uses it with the "with the wild-eyed hope that the other side will . . . admit essential elements").

For this reason alone, the Court should deny the Board's Motion as to the Requests for Admission.

2. The Board Exceeds the Permitted Number of Interrogatories.

The Board has also abused the discovery process by wildly exceeding the permitted number of interrogatories. Rule 33 allows each party, unless otherwise ordered by the court or stipulated by the parties, to serve a maximum of 25 written

interrogatories, including all discrete subparts, on another party. Fed. R. Civ. P. 33(a)(1).² The Interrogatories far exceed this limit.

On or around February 8, 2024, the Board served its First Set of Interrogatories to Plaintiff PRH (the “First Interrogatories to PRH”), which included six written interrogatories directed to PRH. That same day, the Board served its First Set of Interrogatories to Plaintiff PEN (the “First Interrogatories to PEN” and, collectively with the First Interrogatories to PRH, the “First Interrogatories”), which included eight written interrogatories directed to PEN. True and correct copies of the First Interrogatories are attached hereto as **Exhibit A**.

Near the close of discovery, on or around August 27, 2025, the Board served the Second Interrogatories on PEN and PRH. (ECF 241-5 & 241-6.) While at first glance, it appears that the Second Interrogatories only include six additional written interrogatories—which would bring the total number of written interrogatories Defendant issued to PEN and PRH to 14 and 12, respectively—a closer look reveals that Defendant has served *thousands* of interrogatories on Plaintiff. Indeed, as set forth below, Interrogatory No. 1 requires that both PEN and PRH each provide 966 individual responses. *infra*, § II.B. at 14, n.3.

When determining whether subparts of an interrogatory are discrete, and

² The parties have not stipulated to, nor has the Court ordered, an enlargement of the number of written interrogatories that may be exchanged. (EFC 32, at ¶ 3(f).)

therefore constitute a separate interrogatory under Rule 33, courts “utilize the ‘related question’ test.” *In re 3M Combat Arms Earplug Prod. Liab. Litig.*, 2020 WL 2029977, at *4 (N.D. Fla. Apr. 28, 2020). The “related question” test asks whether the subparts are “logically or factually subsumed within and necessarily related to the primary question.” *Forum Architects, LLC v. Candela*, 2008 WL 217119, at *1 (N.D. Fla. Jan. 23, 2008) (citations omitted). An example of “related questions,” as indicated in the Advisory Committee’s Notes, is asking that a party provide information regarding the time, place, persons present, and contents of a communication in a single interrogatory. *Id.* (citing Fed. R. Civ. P. 33(a), advisory committee notes).

Here, the information demanded by the Board through Interrogatory No. 1 cannot be deemed “related,” such that Interrogatory No. 1 should qualify as only one written interrogatory. As mentioned previously, the Board has demanded that, for *each* of the Board Members and for *each* of the books at issue in this litigation, PEN and PRH identify the basis for the Board Members’ vote to remove the books. (ECF No. 241-5 & 241-6.) This demand, that PEN and PRH each provide more than 966 individual responses, is not analogous to the example of providing multiple details to a single communication. As such, Interrogatory No. 1, as served on both PEN and PRH, includes 966 discrete subparts, and far exceeds the limit imposed on the Board. *See* Fed. R. Civ. P. 33(a)(1); (ECF 32, ¶ 3(f)).

Accordingly, the Court should deny the Board's Motion as to Interrogatory No. 1.

B. The Board's Requests for Admission and Interrogatory No. 1 Are Unduly Burdensome.

Even setting aside the Board's disregard for the numerical limit in Rule 33, the Court should deny the Board's Motion because the Board's Requests for Admission and Interrogatory No. 1 are unduly burdensome. Under the Federal Rules, the Court must limit discovery when the requested discovery is disproportionate to the needs of the case, considering, among other things, the burden on the responding party. Fed. R. Civ. P. 26(b)(1) & 26(b)(2)(C)(iii).

Here, Plaintiffs face undue burden in responding to 2,292 requests for admission and Interrogatory No. 1, which request, among other things, that Plaintiffs state: (i) the specific content or message to which each Board Member objected when voting to remove each book; (ii) factual support, specific to each book and each other school district, for the reasons that other school districts voted to remove books based on viewpoint discrimination; and (iii) factual bases for Plaintiffs' denial of each of the 2,292 Requests for Admission. (ECF 241-1, 241-2, 241-5, & 241-6.) As set forth above, Plaintiffs' responses to the Requests for Admission will not narrow the issues for trial and, therefore will be nothing more than a waste of valuable time and resources. *supra* § II.A.1. at 9–10.

Moreover, through the Interrogatories, the Board has demanded that Plaintiffs

provide more than 1,932³ individual responses. Providing more than 1,932 individual written responses would require Plaintiffs to spend untold hours crafting responses. Further, suspecting that Plaintiffs will likely deny each of the 2,292 requests for admission, the Board demanded that Plaintiffs provide an additional 2,292 written responses stating the bases for such denials. (ECF 241-5 & 241-6.) In total, therefore, the Board has effectively demanded that Plaintiffs provide more than 4,224 written responses to the Interrogatories.

The volume of the information demanded by the Board alone is enough to determine that the Requests for Admission and Interrogatory No. 1 are unduly burdensome. Accordingly, the Court should deny the Board's Motion pursuant to Rule 26(b)(2)(C)(iii). Fed. R. Civ. P. 26(b)(2)(C)(iii) (“[T]he court must limit the frequency or extent of discovery . . . if it determines that the discovery sought is outside the scope permitted by Rule 26(b)(1).”); & 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any parties claim or defense and proportional to the needs of the case, considering . . . the burden or expense of the proposed discovery[.]”).

³ Interrogatory No. 1 requires that for each of the 161 books identified in Exhibit 12 to the Second Amended Complaint, PEN state the specific content or message of the book for which each of the five Board Members and the Superintendent of the Escambia County School District voted to remove the book. (ECF 241-6 at 8.) 161 books multiplied by six individuals equates to 966 individual responses. The Board has demanded that PRH provide the same information. (ECF 241-5 at 8.) In total, therefore, the Board requests 1,932 individual written responses.

1. The Board’s Requests for Admission and Interrogatory No. 1 Are Unreasonably Cumulative and Duplicative.

In addition to being unduly burdensome, the Board’s Requests for Admission and Interrogatory No. 1 are unreasonably cumulative and duplicative, which requires the Court to impose limits on their frequency or extent. Fed. R. Civ. P. 26(b)(2)(C)(i).

a) The Board’s Requests for Admission Are Unreasonably Cumulative.

The Board has asked Plaintiffs to admit, individually for every Board Member and challenged book at issue in this action, that Plaintiffs lack factual support that the specified Board Member voted to remove the specified book based on: (i) an ideological objection to the content of the book; (ii) disagreement with the book’s message; and (iii) viewpoint discriminatory reasons. Decisions to remove a specified book based on an ideological objection with the content thereof or disagreement with the book’s message amount to viewpoint discrimination. *See Cambridge Christian Sch., Inc. v. Florida High Sch. Athletic Ass’n*, 942 F.3d 1215, 1240–41 (11th Cir. 2019) (“Viewpoint discrimination is ‘an egregious form of content discrimination’ that occurs ‘when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the regulation.’” (quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995))). In other words, the Board has demanded that Plaintiffs admit *three times* for every book

and for every Board Member that they do not possess factual support for their claim that the books at issue were removed based on viewpoint discrimination. There can be no doubt that the Requests for Admission are unreasonably cumulative discovery requests. Therefore, the Court should deny the Board's Motion. Fed. R. Civ. P. 26(b)(2)(C)(i).

b) The Board's Requests for Admission and Interrogatory No. 1 Are Unreasonably Duplicative.

Moreover, the Court should deny the Board's Motion, because the Requests for Admission and Interrogatory No. 1 are unreasonably duplicative.

(1) The Requests for Admission.

As set forth above, the Board has repeatedly demanded that Plaintiffs provide the same information in response to the Requests for Admission—namely, that Plaintiffs lack factual support for their allegations that the Board Members voted to remove the books at issue in this litigation on the basis of viewpoint discrimination. *supra* § II.B.1.a) at 15–16. Functionally, the Board has propounded the same request for admission thousands of times. (*Id.*; *see also* ECF 241-1 & 241-2.). This is unreasonably duplicative.

(2) Interrogatory No. 1.

Similarly, the Board has demanded that Plaintiffs respond to the same interrogatory, which contains 966 subparts, twice. As mentioned previously, the Board served PEN and PRH with identical interrogatories. (*Compare* ECF 241-1,

with ECF 241-2.) In doing so, the Board has ignored that PRH and PEN are each charged with knowing information in the possession, custody, or control of the other. *See, e.g., Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984) (“Control is defined not only as possession, but as the legal right to obtain documents requested upon demand[.]”); *Culliver v. BP Exploration & Production, Inc.*, 2022 WL 19568968, at *2 (N.D. Fla. Oct. 13, 2022) (“Several courts in this Circuit . . . have broadly defined the concept of control to include the practical ability to obtain documents.”); *Odom*, 337 F.R.D. at 352 (“A reasonable inquiring generally includes requesting information from co-defendants and their counsel.”); *Costa v. Kerzner Intern. Resorts, Inc.*, 277 F.R.D. 468, 471 (S.D. Fla. 2011) (“[D]ocuments have been considered to be under a party’s control (for discovery purposes) when that party has the ‘right, authority, or practical ability to obtain the materials sought on demand.’”) (collecting cases).⁴ Because information that is reasonably available to PEN includes information known by PRH, and vice versa, and because Plaintiffs are required to provide answers to Interrogatory No. 1 based on information that is reasonably available to them, the Board has unreasonably demanded that Plaintiffs respond to

⁴ The principles governing a party’s obligation to produce documents pursuant to Rule 34 are the same as those governing a party’s obligation to provide information in response to interrogatories issued under Rule 33. *Costa*, 277 F.R.D at 471; *Sol S. Turnoff Drug Distributors Inc. v. N.V. Nederlandsche Combinatie*, 55 F.R.D. 347, 349 (E.D. Pa. 1972); *Brunswick Corp. v. Suzuki Motor Co., Ltd.*, 96 F.R.D. 684, 686 (E.D. Wis. 1983).

Interrogatory No. 1 twice over, providing identical answers each time. *Searock*, 736 F.2d at 653; *Culliver*, 2022 WL 19568968, at *2; *Odom*, 337 F.R.D. at 352; *Costa*, 277 F.R.D. at 471. Accordingly, it is indisputable that Interrogatory No. 1 is unreasonably duplicative and, as a result, the Court should deny the Board’s Motion.

2. The Board Seeks Information Already Within Its Possession, Custody, and Control.

Furthermore, Interrogatory No. 1 seeks information that is already in the Board’s possession, custody, and control. The Federal Rules of Civil Procedure allow a party to obtain discovery regarding nonprivileged matters that are “proportional to the needs of the case, considering . . . the parties’ relative access to information.” Fed. R. Civ. P. 26.01(b)(1). If a party propounds discovery that is disproportionate to the needs of the case or that can otherwise be obtained “from some other source that is more convenient, less burdensome, or less expensive,” the Court must disallow such discovery. Fed. R. Civ. P. 26.01(b)(2)(C)(i, iii).

Here, the Board has demanded, among other things, that Plaintiffs identify the specific content or message of each book that each Board Member objected to when voting to remove each book at issue in this litigation. (ECF No 241-5 & 241-6.) The Board, being comprised of the Board Members, is undoubtedly aware of, and has unfettered access to such information. Moreover, the Board has access to all of the challenge forms filed for each of the books, the recordings of the special sessions and the board meetings where some of the books were discussed and is fully in

control of that information. Plaintiffs, on the other hand, have been prevented from obtaining such information through depositions of the Board Members. *infra*, § II.C.1 at 22. It follows, therefore, that the information sought by the Board through Interrogatory No. 1 can otherwise be obtained “from some other source that is more convenient, less burdensome, or less expensive,” than through Plaintiffs’ answers to the Interrogatories.

In addition, the Board has already had the opportunity to obtain the information that the Board purports to seek through Interrogatory No. 1 (*i.e.* the viewpoints that Plaintiffs believe the Board has discriminated against) through the corporate depositions of PRH. On July 23, 2024, PRH was deposed, through its corporate representative Dan Novack. A true and correct copy of excerpts of the transcript of the July 23, 2024, deposition of PRH is attached hereto as **Exhibit B**. During this deposition, the Board requested that PRH identify the viewpoints against which PRH believes the Board discriminated, and the corporate representative answered to the best of his ability as to each book. (*See, e.g.*, Ex. B, 34:7–13, 36:13–37:6; 48:5–18, 52:8–53:25.) During the July 23, 2024, corporate deposition of PRH, by way of non-exhaustive example, the following exchange occurred:

Q: And what’s the viewpoint that’s purportedly being discriminated against with the book *After*?

...

A: . . . And again, the common denominator of that other

category I discussed, which is just total discomfort with discussion of how sex happens and who has it, and how it – happens.

Q: So the viewpoint is sex or sexual activity?

...

A: . . . [o]n the basis of what's publicly available information, is that they're very uncomfortable with how our authors are talking about sex, or author's perspective on sex. That is a viewpoint. The fact of the sex, you know, itself, it can be complicated, and that's obviously a lot of different views in this country as to what sex means to different people. So, it is something that can squarely fall within viewpoint discrimination.

(*Id.*, at 52:8–53:25.) Accordingly, with respect to the Original Removed Books (as defined in the Second Amended Complaint) Defendant has had the information it seeks to obtain through the Interrogatories and the Motion for more than a year. (*See generally, id.*)

PRH was deposed through its corporate representative, Mr. Novack, for a second time in this action on October 15, 2025. A true and correct copy of excerpts of the transcript of the October 15, 2025, corporate deposition of PRH is attached hereto as **Exhibit C**. During this deposition, the Board once again asked PRH to identify the viewpoints against which it believes the Board discriminated. (*See, e.g.*, Ex. C, 153:9–21; 163:4–11.) During the October 15, 2025, deposition, by way of non-exhaustive example, the following exchange occurred:

Q: What viewpoints does Penguin contend are contained in *Life is Funny*?

A: That young people navigate challenges relating to all those things, religion, sex, sexuality, culture, violence, et cetera.

Q: And what viewpoint does Penguin contend is being discriminated against by the removal of *Life is Funny*?

A: That, the viewpoint is that those matters should not be openly discussed, or made available to – to students.

(*Id.*, at 163:4–11.)

Given the testimony contained in the July 13, 2024, and the October 15, 2025, corporate depositions of PRH, the Board cannot claim that it has not already had the opportunity to obtain the information it seeks through Interrogatory No. 1 and the Motion as to PRH. Therefore, the Court should deny the Board’s Motion. Fed. R. Civ. P. 26.01(b)(2)(C)(i, iii).

C. The Board’s Requests for Admission and Interrogatory No. 1 Are Premature.

The Court should also deny the Board’s Motion because the Requests for Admission and Interrogatory No. 1 are premature. Rule 33(a)(2) states that “the court may order that [an] interrogatory need not be answered until designate discovery is complete.” Fed. R. Civ. P. 33(a)(2). Similarly, Rule 36(a)(4) provides that an “answering party may assert lack of knowledge or information . . . if it states that the information it knows or can readily obtain is insufficient to enable it to admit or deny.” Fed. R. Civ. P. 36(a)(4). Whether information is “readily obtainable” is a relative standard that varies from case to case. *Odom v. Roberts*, 337 F.R.D. 347,

351 (N.D. Fla. 2020). Here, all potentially relevant information needed to answer Interrogatory No. 1 and the Requests for Admission is not readily ascertainable to Plaintiffs, because Plaintiffs have been prevented from deposing the Board Members.

1. Whether the Board Members Are Shielded by Legislative Privilege Has Not Yet Been Determined.

As the Court is aware, the question of whether Plaintiffs are permitted to depose the Board Members in this action is currently being appealed to the Eleventh Circuit. *See generally Pen Am. Ctr., Inc., et al v. Carissa Bergosh, et al*, Case No. 25-13698 (11th Cir. Oct. 22, 2025); *Pen Am. Ctr., Inc., et al v. Adams, et al*, Case No. 25-13298 (11th Cir. Sept. 23, 2025). Accordingly, Plaintiffs have been prevented from deposing the Board Members for well over a year.

2. Without Information from the Board Members' Depositions, Plaintiffs Cannot Fully Respond to Interrogatory No. 1 or Requests for Admission.

Without information that will be obtained from the Board Members during their depositions, Plaintiffs are unable to provide any information, over and above that which has already been provided, regarding the Board Members' reasoning for voting to remove the books at issue in this litigation. By way of non-exhaustive example, the Board has requested that Plaintiffs admit that they:

[H]ave no factual support for the allegation that Kevin Adams voted to remove *10 Things I can See From Here* based on an ideological objection with the content of the

book.

. . . [H]ave no factual support for the allegation that Kevin Adams voted to remove *10 Things I can See From Here* based on disagreement with its message.

. . . [H]ave no factual support for the allegation that Kevin Adams voted to remove *10 Things I Can See From Here* based on viewpoint discriminatory reasons.

(ECF 241 at 5–7.) The Board has also requested that Plaintiffs:

[S]tate the specific content or message of [each book listed in Exhibit 12 to the Second Amended Complaint] for which [they] contend each Board Member objected when that member voted to remove the book. If [Plaintiffs’] response is different for each board member, then identify the specific content or message by Board Member.

(*Id.*, at 8.) Stated another way, the Board has demanded that Plaintiffs provide the specific reason that each individual Board Member voted to remove 161 books identified in Exhibit 12 to the Second Amended Complaint. (ECF 219-1 at Ex. 12.) At this point, Plaintiffs have provided the Board with all information they possess on these topics, whether through document productions or deposition testimony. Without being able to depose the Board Members, however, Plaintiffs do not have any additional information to provide the Board.

Plaintiffs have been continuously thwarted in their attempts to obtain additional, potentially relevant information necessary to respond to the Interrogatories and the Requests for Admission through depositions of the Board Members. *See supra* § II.C.1 at 22. Accordingly, the Court should deny the Board’s

Motion, and Plaintiffs should not be required to supplement their responses to Interrogatory No. 1 and Requests for Admission, because the information required to do so is not “readily obtainable from persons and documents within [their] relative control.” *Odom*, 337 F.R.D. at 351 (quoting *Henry v. Champlain Enters., Inc.*, 212 F.R.D. 71, 78 (N.D.N.Y. 2003)).

D. The Board’s Assertion That Plaintiffs Are the Master of Their Complaint Is a Red Herring.

In an attempt to save its Motion to Compel, the Board disingenuously argues that Plaintiffs have violated the rules of discovery because, as “the master of the[ir] complaint,” Plaintiffs should possess all information necessary to prove their claims. (ECF No. 241 at 22 [*sic*].) In making this argument the Board turns a blind eye to the applicable pleading standard and the purpose of discovery. As this Court is well aware, Plaintiffs need not include in their Complaint all facts that support their claims. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Rather, Plaintiffs only need to plead enough factual matter “to state a claim to relief that is plausible on its face.” *Id.* “[B]efore discovery has unearthed relevant facts and evidence,” a plaintiff may not possess the entire universe of information necessary to prove its claims. *Hunt v. Amico Properties, L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016); *see also Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (same). Indeed, the entire purpose of discovery is to ascertain facts necessary to prove or disprove claims at issue in litigation. *See, e.g., Hickman v. Taylor*, 329 U.S. 495, 501 (1947) (“The

various instruments of discovery now serve . . . as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to [the basic] issues [between the parties].”).

As Plaintiffs have been hampered in their attempts to obtain additional discovery that is necessary to supplement their responses to Interrogatory No. 1 and respond to the Requests for Admission, *supra* § II.C.1. at 22, the Board cannot reasonably expect Plaintiffs to possess such information. It is apparent, therefore, that the Board has put forth the argument that Plaintiffs are “the master of the[ir] complaint” solely to distract from the fact that the Board has no basis for its Motion.

E. The Court Should Award Plaintiffs Their Reasonable Attorneys’ Fees and Costs Incurred in Opposing the Motion.

In addition to denying the Motion, the Court should award Plaintiffs their reasonable attorneys’ fees and costs incurred in opposing the Board’s Motion. Rule 37 of the Federal Rules of Civil Procedure provides:

If the motion is denied, the court . . . must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses in opposing the motion, including attorney’s fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(5)(B). The Board’s Motion was not substantially justified, and justice requires that Plaintiffs receive their reasonable fees and costs.

1. The Motion Was Not Substantially Justified.

The Board cannot establish that the Motion was substantially justified. A motion to compel is only “substantially justified” if “there is a genuine, or if reasonable people could differ as to [the appropriateness of the contested action].” *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1314 (11th Cir. 2011) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (alterations in original) (internal quotation marks omitted). Accordingly, “the award of sanctions under Rule 37(a)(5) turns on the specifics of each individual case.” *Id.*

But here, there can be no substantial justification. Defendant cannot justify its demand that Plaintiffs provide information only attainable through depositions, which have not yet occurred due to Defendant’s opposition thereto. *supra*, § II.C.1. at 22. Nor can Defendant justify its demand that Plaintiffs provide *thousands* of responses, both to requests for admission and written interrogatories. *supra*, § II.B. at 13–18. Defendant further cannot justify its demand that Plaintiffs provide unnecessarily cumulative and duplicative responses to questions to which Defendant is in possession of the answer, not Plaintiffs. *Id.* Finally, Defendant cannot justify its abuse of the discovery process through its impermissible use of requests for admission and its presentation of more than 1,932 written interrogatories. *Id.*

2. The Court should award sanctions under Rule 37.

The Board also cannot establish that an award of sanctions under Rule 37

would be unjust. An award of sanctions under Rule 37(a)(5) is only unjust if the party opposing the motion to compel has not suffered prejudice. *BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 12 F.3d 1045, 1051 (11th Cir. 1994); *see also Flexsteel Pipeline Tech., Inc. v. Chen*, 2019 WL 13164175, at * 4 (N.D. Fla. Nov. 26, 2019) (stating that a finding of bad faith is not necessary to impose sanctions that are less severe than dismissal).

Here, Plaintiffs have suffered prejudice in the form of time and money unnecessarily expended in response to the Board's Motion. This is sufficient to support a finding of prejudice. *BankAtlantic*, 12 F.3d at 1051. Given the foregoing, the Court should award Plaintiffs their reasonable attorneys' fees and costs incurred in opposing the Motion.

CONCLUSION

Given the foregoing, Plaintiffs respectfully request that the Court deny the Board's Motion to Compel and award Plaintiffs their reasonable attorneys' fees and costs incurred in responding to the Motion as permitted by Rule 37 of the Federal Rules of Civil Procedure.

Date: October 31, 2025

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CERTIFICATE OF WORD COUNT

The undersigned certifies that this Memorandum complies with the word count limitation set forth in Local Rule 7.1(f) because it contains 6,478 words, excluding the parts exempted by said Local Rule.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2025, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Samantha C. Duke at sduke@rumberger.com; J. David Marsey at dmarsey@rumberger.com; Nicole Sieb Smith at nsmith@rumberger.com; and Jeffrey J. Grosholz at jgrosholz@rumberger.com (counsel for Defendant).

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