

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, et al.,	
	Plaintiffs,
	v.
STEVEN HOBBS, et al.,	
	Defendants.
	and
JOSE TREVINO, ISMAEL CAMPOS, and ALEX YBARRA,	
	Intervenor-Defendants

CASE NO. 3:22-cv-05035 RSL
NON-PARTY JAMES TROYER'S
OPPOSITION TO PLAINTIFF'S
MOTION TO ENFORCE SUBPOENA
OF JIM TROYER OR
ALTERNATIVELY TO EXTEND
DISCOVERY DEADLINE FOR
COMPLIANCE AND PERMIT
DEPOSITION

NOTED: January 27, 2023

ORAL ARGUMENT REQUESTED

1 James Troyer is the Chief of Staff for the Senate Republican Caucus of the Washington
 2 State Legislature. He is not a party to this lawsuit. He opposes Plaintiffs' efforts to enforce a
 3 subpoena generated at the tail end of the authorized discovery period, during the December
 4 holidays, demanding compliance after the authorized discovery period, and which is otherwise
 5 overbroad and unduly burdensome. Plaintiffs' motion to compel should be denied.

6 I. FACTS

7 A. Plaintiffs Have Conducted Extensive Discovery of Non-Party Legislators and Staff.

8 Undersigned counsel represent non-party state legislators and legislative staff of both
 9 political parties subjected to Plaintiffs' subpoenas ("Non-Parties"). Non-Parties responded to 24
 10 very broad deposition subpoenas received between April 5 and October 27, 2022. 1/23/23
 11 Goldman Decl. ¶ 2 & Exs. 1, 5-7. Among these were subpoenas to 15 legislators and six
 12 legislative staff who supported the Redistricting Commissioners. 1/23/23 Goldman Decl. ¶ 2.

13 Although each subpoena was directed to an individual and Plaintiffs never issued a
 14 subpoena to the Legislature, the Legislature voluntarily produced responsive records it maintained.
 15 *Id.* ¶ 4. Counsel for the Non-Parties produced more than 451,491 pages of documents *plus* large
 16 data sets, including one that was 75.6 gigabytes and a second that was 44 gigabytes. Non-Parties
 17 continued producing documents through December 30, 2022. *Id.* ¶ 6. In addition, Plaintiffs
 18 deposed five Non-Parties, the last on December 19, 2022. *Id.* ¶ 5.

19 The Non-Parties and their counsel and other legislative staff cooperated extensively with
 20 Plaintiffs' lawyers. For example, multiple times, including three times *in January 2023*,
 21 Plaintiffs' attorneys informed Non-Parties' counsel that Plaintiffs' counsel had neglected to timely
 22 download records previously produced, which required Non-Parties' counsel to again prepare the
 23 same records for production. *Id.*, Exs. 2-4.

24 On April 5, 2022, Plaintiffs emailed the first of their document subpoenas. *Id.*, Ex. 1.
 25 Among these were subpoenas to 11 legislators, each of which requested: "Any communications,
 26 related in any way to the redrawing of Washington's state legislative districts, population or

1 demographics of Latino and/or Hispanic individuals, racial voting patterns, the Voting Rights Act,
2 or Hispanic and/or Latino voters, with ... jj. James D. Troyer[.]” *Id.* Each of these legislators
3 searched their personal records for, and produced, responsive records. 1/23/23 Taylor Decl. ¶ 2.
4 The Legislature and legislative staff, *voluntarily* searched the legislative systems for, and *also*
5 produced, responsive records. *Id.* ¶ 3. Non-Parties began producing responsive records on April
6 22 and completed this production on November 18, 2022. 1/23/23 Goldman Decl. ¶ 7.

7 April 22, Plaintiffs’ counsel emailed three more subpoenas to legislators. *Id.* ¶ 10 & Ex. 5.
8 Each included the same request for communications with Chief of Staff Troyer. *Id.* Plaintiffs
9 never served Sen. Brad Hawkins or Rep. Vicki Kraft. 1/23/23 Goldman Decl. ¶ 10. Counsel for
10 the Non-Parties produced Rep. Gina Mosbrucker’s responsive records and *voluntarily* produced
11 responsive *legislative* records on May 10 and June 17. *Id.*

12 On October 17, Plaintiffs’ lawyer emailed subpoenas for Sens. Mark Schoesler and Jim
13 Honeyford. *Id.*, Ex. 6. Each included the prior request concerning Chief of Staff Troyer plus:
14 “Any communications, related to the 2022 elections for Washington Legislative Districts 14 and
15 15 from 2021 to Present with ... n. James D. Troyer[.]” *Id.* Non-Parties’ counsel produced the
16 Senators’ responsive records and *voluntarily* produced responsive *legislative* records on November
17 7. 1/23/23 Goldman Decl. ¶ 11.

18 On October 27, Plaintiffs’ counsel emailed subpoenas for Sen. John Braun and Rep.
19 Jeremie Dufault. *Id.*, Ex. 7. They included both requests concerning Chief of Staff Troyer. *Id.*
20 Counsel for the Non-Parties produced the legislators’ responsive records and *voluntarily* produced
21 responsive *legislative* records on November 18. *Id.* ¶ 12.

22 Plaintiffs’ attorneys learned more about Chief of Staff Troyer’s role in their depositions.
23 For example, on August 15, they deposed Paul Campos. He is legislative staff for the Senate
24 Republican Caucus. He was assigned to work with Commissioner Joe Fain during the
25 redistricting process. *Id.*, Ex. 8 at 44-46. He testified about conversations he had with Chief of
26 Staff Troyer regarding redistricting. *Id.* at 55:11-22. Plaintiffs’ attorney showed him emails he

1 had received and sent to Chief of Staff Troyer. *Id.* at Dep. Ex. 7. Plaintiffs’ attorney asked:
 2 “[W]ho is James Troyer?” 1/23/23 Goldman Dec., Ex. 8 at 105:7-14. Mr. Campos responded:
 3 “James Troyer is the chief of staff of the Republican caucus.” *Id.* at 105:15-16.

4 Through January 13, 2023, Non-Parties’ counsel billed 184 hours responding to Plaintiffs’
 5 subpoenas and defending their depositions. Their paralegals billed 160 hours on this work. This
 6 does not include legislative staff’s substantial time spent voluntarily responding to the subpoenas
 7 Plaintiffs only directed to individuals. 1/23/23 Goldman Decl. ¶ 14; 1/23/23 Gorrell Decl. ¶ 2.

8 **B. The Court’s Orders Setting Discovery Deadlines.**

9 Upon filing this lawsuit, Plaintiffs proposed a September 2022 discovery deadline. Dkt
 10 #43, Jt Rule 26(F) Rep. at 8:12. They said: “this case will be ready for trial no later than
 11 December 8, 2022.” *Id.* at 9:11. The Court ordered that discovery be completed by September 11,
 12 2022. Dkt #46, Minute Order at 1.

13 June 24, the State moved to continue the court deadlines. Dkt #79, Mot. to Continue.
 14 Plaintiffs opposed the motion because a continuance would “severely prejudice” them. Dkt #81,
 15 Pls.’ Opp’n at 4:5. They accused the State’s lawyers of a “lack of preparedness and diligence[.]”
 16 *Id.* at 8:1. They claimed “it is (and always has been) entirely possible for the State to defend this
 17 case within the framework of the case management schedule set by the Court[.]” They recognized
 18 that “the mere allegation that the State may fail to complete discovery in the time allowed does not
 19 constitute good cause for an extension or continuance under the local rules[.]” *Id.* at 8:10-21.

20 Over Plaintiffs’ objections, the Court granted the State’s motion. The Court ordered that
 21 discovery must be completed by January 1, 2023. Dkt #93, Minute Order at 1:20. “These are firm
 22 dates that can be changed only upon by order of the Court, not by agreement of counsel or the
 23 parties. The Court will alter these dates only upon good cause shown; failure to complete
 24 discovery within the time allowed is not recognized as good cause.” *Id.* at 2:10-14.

25 **C. Plaintiffs’ Last-Minute Efforts to Subpoena Chief of Staff Troyer.**

26 Plaintiffs were well aware of Chief of Staff Troyer from the outset. But it was not until

1 December 5, that their attorney called Non-Parties’ counsel to ask whether she also represented
2 Chief of Staff Troyer. 1/23/23 Goldman Decl. ¶ 15. She responded on December 7: “We do
3 represent him and I am authorized to receive a subpoena duces tecum for him. He will be on
4 holiday leave beginning next week. Consequently, we will accept service of a subpoena duces
5 tecum with a deadline of January 6 or later.” *Id.*, Ex. 9. Plaintiffs’ lawyer did not inform Non-
6 Parties’ counsel that the court-ordered discovery cutoff was January 1, 2023. In fact, there was no
7 response at all from Plaintiffs’ counsel. 1/23/23 Goldman Decl. ¶ 16.

8 Nine days later and two days after Chief of Staff Troyer had, as advertised, left on his
9 vacation, Plaintiffs’ lawyer emailed an “amended” Troyer subpoena, though there was no prior
10 one. 1/23/23 Troyer Decl. ¶ 3; 1/23/23 Goldman Decl., Ex. 15. It had a January 2 deadline and
11 demanded 23 categories of documents for a two-year period, including communications with 26
12 people. *Id.*, Subpoena at 7-11. The requests also were very broad. For example, they demanded
13 “any and all communications related to redistricting in Washington” and “any and all documents
14 related to” this lawsuit. *Id.* at 8. Of the 26 people, Plaintiffs already had obtained from the
15 undersigned counsel discovery from nine. 1/23/23 Goldman Decl. ¶ 22. Two are other third-
16 parties Plaintiffs subpoenaed. *Id.*, Ex. 16. Two are parties and have been or could have been
17 subject to party discovery. Dkt #96, Mot. to Intervene. Four are lawyers for parties whose written
18 communications on behalf of their clients have been or could have been subject to party discovery.
19 Dkt #96, Order; Dkt #90, Order; Dkt #86, Order; Dkt #57, Mot. to Intervene.

20 On December 14, Non-Parties’ counsel immediately responded: “I am not authorized to
21 accept service of today’s subpoena. I advised you previously that Mr. Troyer would be out of the
22 office on vacation beginning this week.... I note that if service were made, we would be objecting
23 to the timing and burdensomeness of the proposed subpoena.” 1/23/23 Goldman Decl., Ex. 11.
24 Another week passed with no word from Plaintiffs’ attorney. 1/23/23 Goldman Decl. ¶ 18.

25 Then, on December 20, Plaintiffs’ lawyer emailed a “2nd Amended Troyer Subpoena” with
26 a return date of January 6. *Id.*, Ex. 10. This subpoena also demanded 23 categories of documents,

1 including communications with 26 people. Plaintiffs' lawyer still did not inform Non-Parties'
2 counsel of the January 1 discovery cutoff. 1/23/23 Goldman Decl. ¶ 17. This subpoena, which
3 arrived more than a week after Chief of Staff Troyer had begun his holiday leave (and remained
4 on leave) and with seven business days remaining in the year, prompted Non-Parties' counsel to
5 follow up. On December 20, she asked: "When is the discovery cutoff in this case?" Plaintiffs'
6 attorney responded: "Discovery cutoff is Jan 3." The Non-Parties' counsel asked: "Under what
7 authority do you propose to issue a subpoena for after the discovery deadline?" *Id.*, Ex. 11.
8 Plaintiffs' attorney incongruously responded: "The discovery cutoff is after we issued the first
9 subpoena and after we issued the revised subpoena, at your request. I have been tied up in
10 depositions. Let me know if your research shows that I am mistaken. Regardless, thank you for
11 agreeing to accept service and our e-mail agreement on your client's January 6 performance date.
12 The Court, I know, appreciates us working together as we have on this subpoena." *Id.*

13 On December 21, Non-Parties' counsel issued a detailed Rule 45 objection to the latest
14 version of the Troyer subpoena. *Id.*, Ex. 12. In particular, the objection stated:

15 I note that your first subpoena was never served. Your second subpoena is not
16 allowed by the Court's Order authorizing discovery. For these reasons, we object
17 to your subpoena of yesterday.

18 In addition, we object to the timing of yesterday's subpoena for other reasons.
19 Based on the first subpoenas you emailed to us, you have known about Chief of
20 Staff Troyer's role since April. You have received many records to or from Chief
21 of Staff Troyer in the voluminous document production we already have made in
22 response to your 24 other subpoenas to legislators and legislative staff. Despite
23 knowing his role, you waited until December 5 to inquire about him. You then
24 waited until after he left on his vacation to attempt service of your various
25 subpoenas on him. Yesterday's subpoena which you emailed to me arrived while
26 Chief of Staff of Troyer remains on holiday vacation. Upon his return to the office
on January 3, he will be focusing his full attention on preparing for the legislative
session which begins January 9, 2023.

For each of these reasons, we object to yesterday's subpoena. It is overbroad and
unduly burdensome, served late, and it imposes an impossible burden on a non-
party while you know him to be on vacation.

Id.

1 **D. The Late December Limited Extension of Party Discovery.**

2 On December 21, counsel for the State emailed counsel for the other parties regarding the
3 party discovery that was due over the New Year’s weekend. Dkt #131, Intervenor-Defs.’ Resp. at
4 Ex. 1 at 7. Plaintiffs’ attorney “request[ed] that due dates for responses **by Plaintiffs** be extended
5 to January 6th[.]” *Id.* (emphasis added) Later, on December 23, Plaintiffs’ lawyer wrote:
6 “Plaintiffs agree to extend the written discovery response deadline **for all parties** to January 6,
7 2023[.]” *Id.* at 4 (emphasis added). Counsel for the Non-Parties had no knowledge of, or
8 involvement with, any of these discussions. 1/23/23 Goldman Decl. ¶ 24.

9 On December 29, the parties filed their Stipulated Motion and [Proposed] Order to Allow
10 Deps. Out of Time and Extension of **Written** Disc. Responses. Dkt #121 (emphasis added). The
11 parties *did not* simply request a continuance of the discovery deadline. Rather, they stipulated:

12 3. The Parties have also discussed and agreed to an extension of all **pending**
13 **written discovery responses** and related motions. The Parties’ proposed
14 extensions are as follows:

15 A. All **written discovery responses**, including requests for production,
16 requests for admissions, and interrogatories, **that are presently served upon**
17 **the Parties, by other Parties**, shall be due to the requesting party by January
18 6, 2023[.]

19 *Id.* at 2 ¶ 3 (emphasis added).

20 On December 30, this Court entered the limited continuance. Dkt #122, Stipulated Mot. &
21 Order to Allow Deps. Out of Time & Extension of **Written** Disc. Responses (emphasis added).
22 This Order permitted the parties until January 6 to serve “[a]ll **written discovery responses**,
23 including requests for production, requests for admissions, and interrogatories, **that are presently**
24 **served upon the Parties, by other Parties**[.]” *Id.* at 2:8-10 (emphasis added).

25 Non-Parties’ counsel next heard from Plaintiffs’ attorney on January 4. She incorrectly
26 stated that “the Court has extended the deadline for discovery to January 6 – the date we agreed to
extend for compliance with Mr. Troyer’s subpoena.” 1/23/23 Goldman Dec., Ex. 13. She
continued: “Since you had already agreed to accept service of a subpoena with that compliance
date, and your subsequent objection was that January 6 was past the discovery deadline, I presume

1 this resolves your concern and you will accept service of the subpoena and produce responsive
2 documents?” *Id.* Incredibly, she was now requesting a two-day response to the vast subpoena.

3 Upon review of the Order, it was apparent that Plaintiffs’ lawyer had misrepresented the
4 Court’s limited continuance. Non-Parties’ counsel immediately responded:

5 Please refer to Jessica’s December 14, 2022 email and December 21, 2022 letter to
6 you on this subject, which confirm that we are not authorized to accept service of a
7 subpoena with a return date of tomorrow. Additionally, the order attached to your
8 email extends the deadline to respond to “requests for production, requests for
admissions, and interrogatories, that are presently served upon the Parties, by other
Parties” to January 6, 2023. A subpoena to a non-party would seem to fall outside
the scope of the order.

9 *Id.*, Ex. 14.

10 Plaintiffs’ lawyers conducted a telephonic discovery conference with Non-Parties’ counsel
11 regarding their demand for documents from Chief of Staff Troyer. However, contrary to the
12 suggestion in their motion, Mot. at 1:18-21, there was no discussion at all about deposing him.
13 1/23/23 Goldman Decl. ¶ 25.

14 Plaintiffs’ scant recitation of the “background” in their motion addresses virtually none of
15 the relevant facts described above.

16 **E. Now, the Legislative Session is Under Way.**

17 The Legislature began its 105-day session on January 9. Pursuant to the Constitution, the
18 session must conclude by April 23. See <https://leg.wa.gov/legislature/pages/cutoff.aspx> (last
19 visited Jan. 15, 2023). Chief of Staff Troyer has substantial, very time consuming obligations
20 during the legislative session, which leave him insufficient time even to sleep.

21 As the Chief of Staff for the Senate Republican Caucus, he supervises 21 staff during the
22 legislative session. Eight are lawyers and one is the Policy Director. He supervises nine
23 communications staff, two administrative staff, and one session staff. 1/23/23 Troyer Decl. ¶ 4.

24 The legislative session runs on strict deadlines. The first cutoff for policy bills to get out
25 of the committee process is February 17. Bills must get out of fiscal committees by February 24.
26 The next cutoff is March 8, by when bills must pass off the Senate or House floors. House bills

1 which pass off the House floor then come to the Senate and they must be passed out of Senate
2 policy committees by March 29. Fiscal bills from the House must be passed out of the Senate
3 fiscal committees by April 4. All House bills, except those not subject to the legislative cutoff,
4 must be passed off the Senate floor by April 12. Final passage of budgets and bills not subject to
5 the cutoff must be completed by Sine Die on April 23. Each cutoff involves a sprint for legislative
6 staff and all aspects of the session must be managed with these deadlines in mind. *Id.* ¶ 5.

7 Chief of Staff Troyer's days during the legislative session are long and burdensome. For
8 example, on opening day, January 9, he awoke at 4:30am to read materials necessary for the day's
9 work with his caucus. He left his home at 7:10am to drive from Pierce County to Olympia. Upon
10 his arrival in Olympia, he attended to moving his staff into temporary offices in another building
11 as they had moved out of their offices in an 80-year old building in late November and early
12 December 2022. At 9:30am, he attended the leadership meeting with Senators and staff to outline
13 the day's agenda. At 10am, he met with 19 Senators for a caucus meeting. He administered the
14 leadership elections for the caucus. He worked with the Senators in their discussion of proposed
15 Senate rules and legislative session strategies. The caucus meeting broke at approximately
16 11:30am to prepare for the 12pm opening day ceremony. During that half hour before noon, Chief
17 of Staff Troyer met with Senators about specific duties for the opening ceremony. During the
18 ceremony, he reviewed press releases for the Senators as they were sworn in and as their
19 leadership positions were announced. *Id.* ¶ 6.

20 Following attending the opening day session, Chief of Staff Troyer met with his staff to
21 focus efforts on drafting bills and communications strategies for the session. He addressed one
22 complicated medical leave issue to make sure that the needed work was accomplished under the
23 looming legislative deadlines. Then, without pause, he met with a Senator and key lobbyists to
24 discuss issues for the legislative session. *Id.* ¶ 7. Chief of Staff Troyer finally left the Capitol
25 after 8pm, arriving home around 9pm. As he has a physical condition which requires regular
26

1 exercise, he exercised until 10pm. And with that, day one of the legislative session ended for the
2 Chief of Staff. *Id.* ¶ 8.

3 Day one is typical of Chief of Staff Troyer’s days during the legislative session. He has
4 myriad other responsibilities. The Legislature faces “a host of serious issues” and his caucus has
5 “an ambitious to-do list.” *Id.*, Exs. 1-2. He monitors the Senate committee meetings, he
6 strategizes with his Senators regarding responses to press inquiries, he attends press availabilities
7 with his Senators, he works with policy staff to discuss issues raised with the press, he meets with
8 lobbyists. He works with his Senators’ personal staff to provide needed support from the caucus
9 staff. Policy reading and news review takes up several hours every day. He eats most of his meals
10 over his desk while he works. His days begin very early and end very late. A 105-day legislative
11 session presents more work that Chief of Staff Troyer must do than there are hours available in the
12 day to do so. 1/23/23 Troyer Decl. ¶ 9.

13 **F. January 20, 2023 Continuance of Pre-Trial Deadlines.**

14 The last business day before the filing of this opposition brief, the Court issued an Order
15 addressing the November 2 Amended Answer filed by the intervenors without leave of Court. Dkt
16 #103. Denying leave to amend, this Court noted that “[t]he nature of this case required an
17 aggressive discovery schedule to ensure its timely resolution: discovery in this mater closed (**with**
18 **limited exceptions**) on January 1, 2023.” Dkt #136, Order at 4:9-12 (emphasis added). However,
19 for the sake of “judicial efficiency” with the companion case, the Court bumped out the trial date
20 to match the companion case. The Court ordered that a revised case management order be issued.
21 *Id.* at 5. Without the ability to consider impacts on the Non-Parties, this resulted in a new
22 February 5 discovery cutoff. Dkt #137, 2nd Am. Order Setting Trial Date & Related Dates.

23 **II. ARGUMENT**

24 “The subpoena power is a substantial delegation of authority to private parties and those
25 who invoke it have a grave responsibility to ensure it is not abused.” *Theofel v. Farey-Jones*, 359
26 F.3d 1066, 1074 (9th Cir. 2004). “Underlying the protections of Rule 45 is the recognition that the

1 word ‘non-party’ serves as a constant reminder of the reasons for the limitations that characterize
2 third-party discovery.” *Akmal v. United States of America*, No. C12-1499RSL, 2014 WL 906231,
3 *2 (W.D. Wash. Mar. 7, 2014) (quotation marks & citations omitted). “The Court is charged with
4 enforcing parties’ duties to avoid imposing undue burden or expense on persons subject to a
5 subpoena.” *Reimann v. Does 1-1000*, No. C07-5130RJB, 2007 WL 1575307, *2 (W.D. Wash.
6 May 22, 2007). Contrary to Rule 45’s fundamental requirements, Plaintiffs seek to abuse the
7 subpoena process, impose a substantial and unwarranted burden on a non-party, and
8 misrepresented the Court’s limited extension of the deadline for written party discovery.

9 There is no reason why Plaintiffs did not serve a document subpoena on Chief of Staff
10 Troyer in October 2022. Or in November 2022. Or even on December 7, 2022, the date they
11 learned that Chief of Staff Troyer would be leaving for his holiday vacation on December 12. The
12 machinations they have engaged in since are improper and should not be countenanced.

13 Plaintiffs’ first subpoena *did not* provide a reasonable time for compliance. It was served,
14 *and* required a response, during his vacation. Knowing his vacation was to begin on December
15 12, Plaintiffs waited to serve it until December 14. It required a response by January 2. Chief of
16 Staff Troyer did not return to work until January 3. 1/23/23 Troyer Decl. ¶ 3.

17 Plaintiffs’ second subpoena included a deadline past the court-authorized discovery period
18 and it was served even later into Chief of Staff Troyer’s vacation. Then, on January 4 – two days
19 before the out-of-time deadline in their second subpoena – Plaintiffs attempted to cure this
20 problem by telling Chief of Staff Troyer’s counsel that “the Court has extended the deadline for
21 discovery to January 6,” misrepresenting the plain limitation of this extension to “written
22 discovery responses ... that are presently served upon the Parties, by other Parties[.]” Dkt #122,
23 Stipulated Mot. & Order at 2:8-10. The subpoena to Chief of Staff Troyer did not call for written
24 responses nor was it served upon a party by another party. Moreover, the two-day notice on
25 January 4 was most definitely not a reasonable time to comply.

1 Now, Plaintiffs seek to leverage Friday’s extension, for wholly unrelated reasons, of the
2 discovery deadline to February 5. They want another re-do of their late, burdensome subpoena to
3 Chief of Staff Troyer, this time well into the legislative session. 1/23/23 Goldman Decl., Ex. 17.

4 Rule 45(d)(1) “impose[s] a duty on litigants to refrain from unreasonably or unduly
5 burdening the person from whom discovery is requested.” *Columbia Asset Recovery Grp., LLC v.*
6 *Phoenix Processor Ltd Pship.*, No. C13-230RSL, 2014 WL 813796, *3 (W.D. Wash. Mar. 3,
7 2014). Plaintiffs wholly disregarded this duty. Their lengthy subpoena is unduly burdensome and
8 overbroad. Incredibly, they argue the “targeted nature of the requests (both in their timeframe and
9 subject matter).” Mot. at 4:25. To the contrary, they asked for 23 types of documents, over a two-
10 year period, and communications to and from 26 people. What would have been a burdensome
11 subpoena in October 2022, and November 2022, and December 7, 2022, is by any definition
12 unduly burdensome in January 2023 with the legislative session under way.

13 Plaintiffs’ claim that Chief of Staff Troyer had a “unique role” goes without explanation.
14 *Id.* at 4:24. They say that they have known for some time that he “was involved in recruiting
15 candidates to run for office in Legislative District 15” and that “just yesterday” “it was revealed”
16 by Jose Trevino that Chief of Staff Troyer “was also involved in recruiting intervenors to
17 participate in this lawsuit.” *Id.* at 3:18-22. To the degree the former information is relevant at all,
18 Plaintiffs offer no explanation for their failure to timely issue a subpoena within the allowed
19 discovery period. To the degree either fact is relevant at all, they have Mr. Trevino’s testimony
20 attesting to these facts.

21 “The Court may limit the extent of discovery” under Rule 45 “if the discovery sought ‘can
22 be obtained from some other source that is more convenient, less burdensome, or less expensive.’”
23 *DeVivo v. Sovereign Lending Group Inc.*, No. C22-5254RSM, 2022 WL 17547270, *1 (W.D.
24 Wash. Dec. 9, 2022) (quoting FRCP 26(b)(2)(C)(i)). Plaintiffs have not argued, let alone
25 demonstrated, why Mr. Trevino’s already-obtained testimony nor the vast quantity of already-
26 obtained records is insufficient. Nor have they demonstrated why they did not obtain the

1 information from the parties to this lawsuit. *U.S. Fire Ins. Co. v. Icicle Seafoods, Inc.*, C20-
2 401RSM, 2021 WL 3602523, * 4 (W.D. Wash. Aug. 13, 2021) (“Courts are particularly reluctant
3 to require a non-party to provide discovery that can be produced by a party.”) (quotation marks,
4 brackets & citation omitted). Where the party “failed to demonstrate why the same information
5 cannot be obtained” directly from the entities “who are actual parties to this action,” its motion to
6 compel a subpoena was denied. *Id.* What is apparent here is that Plaintiffs’ subpoena is the same
7 one that they emailed in December and that the Trevino deposition January 9 is only a fig leaf.

8 Furthermore, Plaintiffs never served Chief of Staff Troyer with either of their improper
9 subpoenas. “Rule 45 does not require mere notice, it requires *service*.” *Kantor v. Big Tip, Inc.*,
10 No. 2:15-cv-01871-RAJ, 2017 WL 2634207, *2 (W.D. Wash. June 19, 2017) (declining to enforce
11 subpoena). The emailed subpoenas are not enforceable. Moreover, no subpoena was served on
12 the Legislature and, had one been served on Chief of Staff Troyer, it would not apply to legislative
13 documents which he does not legally possess, have custody of, or control. FRCP 45(a)(1)(A)(iii);
14 *In re Citric Acid Litigation*, 191 F.3d 1090, 1107 (9th Cir. 1999) (“Control is defined as the legal
15 right to obtain documents upon demand.”) (quotation marks & citation omitted); 1/23/23 Gorrell
16 Decl. ¶ 2.

17 Finally, Plaintiffs request that the Court authorize a deposition. But they never issued a
18 deposition subpoena. Plaintiffs do not say what questions they would ask Chief of Staff Troyer.
19 Moreover, they say only that “this evidence” which they obtained from Mr. Trevino “is
20 particularly relevant to the special circumstances matter.” Mot. at 5:17-22. As they admittedly
21 have “this evidence,” they cannot justify the undue burden this would cause to Chief of Staff
22 Troyer and his colleagues during the legislative session.

23 Pursuant to FRCP 45(d)(1), Chief of Staff Troyer requests an award of attorney’s fees
24 incurred in responding to Plaintiffs’ groundless motion to enforce an improper subpoena.

1 DATED this 23rd day of January, 2023.

2 Respectfully submitted,

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4 Attorneys for James Troyer

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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN SOTO PALMER, et al., <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> STEVEN HOBBS, et al., <p style="text-align: center;">Defendants.</p> <p style="text-align: center;">and</p> JOSE TREVINO, ISMAEL CAMPOS, and ALEX YBARRA, <p style="text-align: center;">Intervenor-Defendants</p>		CASE NO. 3:22-cv-05035 RSL [PROPOSED] ORDER DENYING PLAINTIFFS’ MOTION TO ENFORCE SUBPOENA OF JIM TROYER OR ALTERNATIVELY TO EXTEND DISCOVERY DEADLINE FOR COMPLIANCE AND PERMIT DEPOSITION NOTED: January 27, 2023 <u>ORAL ARGUMENT REQUESTED</u>
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This matter came before the Court on Plaintiffs’ Motion to Enforce Subpoena of Jim Troyer or Alternatively to Extend Discovery Deadline for Compliance and Permit Deposition.

The Court, having reviewed the pleadings and evidence presented and on file in this motion, including:

1. Plaintiffs’ Motion to Enforce Subpoena of Jim Troyer or Alternatively to Extend Discovery Deadline for Compliance and Permit Deposition;
2. Non-Party James Troyer’s Opposition to Plaintiff’s Motion to Enforce Subpoena of Jim Troyer or Alternatively to Extend Discovery Deadline for Compliance and Permit Deposition;

1 3. The Declaration of Jessica Goldman in support thereof and the exhibits attached
2 thereto;

3 4. The Declaration of James Troyer in support thereof and the exhibits attached thereto;

4 5. The Declaration of Jeannie Gorrell in support thereof; and

5 8. Plaintiffs' reply brief.

6 Based on the oral argument and the pleadings submitted in connection herewith, IT IS
7 HEREBY ORDERED that:

8 1. Plaintiffs' Motion to Enforce Subpoena of Jim Troyer or Alternatively to Extend
9 Discovery Deadline for Compliance and Permit Deposition is DENIED; and

10 2. Non-party James Troyer is awarded reasonable attorney's fees pursuant to FRCP
11 45(d)(1) for having to oppose Plaintiffs' motion. Chief of Staff Troyer shall submit his fee request
12 by _____, Plaintiffs shall submit any response by _____, and Chief of Staff Troyer
13 shall submit any reply by _____.

14 DATED this _____ day of _____, 2023.

15
16
17
18 _____
UNITED STATES DISTRICT JUDGE

19 Presented by:

20 SUMMIT LAW GROUP, PLLC
21 Attorneys for James Troyer

22 By: /s/ Jessica L. Goldman
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