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**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JENNY ROE, a minor, by and through parent
DEBBIE ROE; JANE NOE, a minor, by and
through parents JEAN NOE and JOHN NOE;
and JILL POE, a minor, by and through parents
SARA POE and DAVID POE,

Plaintiffs,

v.

UTAH HIGH SCHOOL ACTIVITIES
ASSOCIATION; GRANITE SCHOOL DISTRICT;
JORDAN SCHOOL DISTRICT, and
SUPERINTENDENTS RICH K. NYE and
ANTHONY GODFREY, in their official capacities,

Defendants.

**MOTION TO STRIKE
ALLEGATIONS IN THE SECOND
AMENDED COMPLAINT**

Case No.: 220903262

Judge Keith Kelly

Pursuant to Utah R. Civ. P. 12(f), Defendants Utah High School Activities Association, Granite School District, Jordan School District, and Superintendents Rich K. Nye and Anthony Godfrey hereby move the Court for an order striking paragraphs ¶¶ 2 (last clause), 43, 46-49, 54-55, 58-61, 64, 69-73, 85 of the Second Amended Complaint (Dkt. No. 24). Defendants are filing simultaneously herewith motions to dismiss pursuant to Rules 12(b)(1) (the “Standing Motion”) and 12(b)(6) (the “Merits Motion”).

INTRODUCTION

In considering Defendants’ Standing Motion, the Court is to examine Plaintiffs’ standing based upon the allegations of the Second Amended Complaint at the time it was filed. *See Mallory v. Brigham Young Univ.*, 2014 UT 27, ¶ 33 fn. 1. However, Plaintiffs’ objection to the production of mental health records, which this Court sustained while also entering an Order in Limine preventing Plaintiffs from asserting individualized harm, raises questions of standing related to whether Plaintiffs have alleged a redressable injury. *See* Order in Limine dated July 12, 2022 (Dkt. 89). Plaintiffs’ stipulation to the Order in Limine effectively amends the allegations in their Second Amended Complaint regarding individualized harm. But because the Court considers the allegations of the Complaint *as filed* when determining Defendants’ Standing Motion, Defendants move to strike the allegations of individualized harm so that the Complaint conforms with Plaintiffs’ subsequent objection and stipulation.

To be certain, Plaintiffs stipulated to the Order in Limine in the context of the limited discovery that precedes a preliminary injunction hearing. Defendants understood Plaintiffs to object to *any* production of mental health records at *any* time during the case. However, if Plaintiffs’ objection to the production of mental health records applies *only* to their Motion for

Preliminary Injunction (*i.e.*, Plaintiffs will agree to produce the records during the ordinary course of discovery), then Defendants will withdraw this Motion to Strike. There are, though, other aspects of the Standing Motion the Court may consider in reference to the Complaint as it was filed.

BACKGROUND

By agreement of the parties in this case, this Court permitted informal discovery on an expedited schedule. On June 28, 2022, Defendants served Plaintiffs with informal discovery requests. On June 29, 2022, Plaintiffs returned their responses and objections. The parties met and conferred telephonically on June 30, 2022, and through subsequent email communications, came to an agreement on all discovery except Defendants' request for Plaintiffs' mental health records, to which Plaintiffs objected on the grounds of mental health therapist-patient privilege.

On July 5, 2022, the Court held a telephone conference and heard oral argument on this issue. The Court entered an order on July 12 with the following operative provision:

Plaintiffs shall be precluded from introducing evidence that Part 9 of H.B. 11 has caused them to be diagnosed with mental health conditions or has exacerbated any preexisting mental health conditions and are precluded from introducing evidence about any such mental health impacts. Plaintiffs will be limited to presenting evidence about the generalized type of psychological damage that would impact transgender high school girls in general as a result of not being able to compete on girls' school sports teams.

See Order in Limine dated July 12, 2022 at 2-3 (Dkt. 89). Accordingly, Defendants request that statements in the Second Amended Complaint regarding Plaintiffs' individual harms of which they are now prohibited from presenting evidence be stricken. These are ¶¶ 2 (last clause), 43, 46-49, 54-55, 58-61, 64, 69-73, 85.

ARGUMENT

Applying the Court's Order in Limine, statements in the Second Amended Complaint and evidence that is inconsistent with the Order should be stricken. Utah Rule of Civil Procedure 12(f) provides that a party may move and a court "may order stricken from any pleading any insufficient defense or any redundant, *immaterial*, impertinent, or scandalous matter." Utah R. Civ. P. 12(f) (emphasis added). "A motion in limine is a procedure for obtaining a ruling on the admissibility of evidence prior to or during trial, but before the evidence has been offered." *Anderson-Wallace v. Rusk*, 2021 UT App 10, 482 P.3d 822, 825 n.2, *cert. denied*, 496 P.3d 716 (Utah 2020) (quoting *State v. Bermejo*, 2020 UT App 142, ¶ 8 n.4, 476 P.3d 148). The Utah Court of Appeals upheld the decision of a trial court to grant a "motion in limine and consequently strike all of the evidence [a party] planned to use to support his damages[.]" *Butler v. Mediaport Ent. Inc.*, 2022 UT App 37, ¶ 49, 508 P.3d 619, 633. Because the Order in Limine prohibits the future entry of evidence of individual mental health harms, the allegations about the mental health of the individual Plaintiffs contained in the Second Amended Complaint are immaterial and should be stricken.

An Order in Limine can also form the basis of a dispositive motion if the order eliminates evidence necessary for proof of an essential element. For example, in *Butler*, "[t]he summary judgment aspect came into play only after the court granted the motion in limine, leaving [the party] unable to prove damages on any of his claims." 508 P.3d at 625 n.2; *see also Keystone Ins. Agency, LLC v. Inside Ins., LLC*, 2019 UT 20, ¶ 8, 445 P.3d 434, 438 (affirming the trial court's order in limine and order granting partial summary judgment on that basis). Here, Defendants have filed a potentially dispositive Standing Motion (and a potentially dispositive Merits Motion). The Order in Limine forms part of the basis of the Standing Motion and the Second Amended

Complaint should be modified pursuant to the Motion to Strike to conform with the Order in Limine.

CONCLUSION

The Court should strike any statements or evidence in the record inconsistent with its Order in Limine.

DATED: July 13, 2022.

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ELECTRONIC FILING CERTIFICATE

I certify that on this 13th day of July 2022, I caused to be served via electronic court filing a true and correct copy of the foregoing **MOTION TO STRIKE ALLEGATIONS IN THE SECOND AMENDED COMPLAINT** to the following:

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