**PROPOSED TENTATIVE**

There are two matters on calendar. The first is plaintiff John Doe's "Motion to Compel California Commission on Teacher Credentialing To Produce Records Subpoenaed By Plaintiff[,]" along with the opposition filed by the California Commission of Teacher Credentialing (Commission) through the California Attorney General. That matter was continued from April 3, 2024, with directions that plaintiff submit an amended separate statement and possible additional briefing if desired. It appears an amended separate statement was filed, but no additional briefing has been submitted. The second motion was filed more recently by Lompoc Unified School District (hereafter, Lompoc), entitled "Motion to Stay the Entire Action[,]" pending resolution of two appellate matters: one by the Court of Appeal, First Appellate District, and one by the Court of Appeal, Second Appellate District, Division Six, which will address the propriety of the revival provisions contained in Assembly Bill 218, which amended Code of Civil Procedure section 340.1 and which extended the statute of limitations for childhood sexual assault by 14 years, revived time-barred claims for three years, and eliminated the shortened limitations period for claims against public agencies. (See Assem. Bill No. 218 (2019–2020 Reg. Sess.) § 1; Off. of Assem. Floor Analyses, analysis of Assem. Bill No. 218 (2019-2020 Reg. Sess.) as amended Aug. 30, 2019, p. 2; see *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, 1025.) Assembly Bill 218 is critical to the four causes of action advanced by plaintiff.

The court will address Lompoc's motion first, and then, if appropriate, John Doe's motion. It will then conclude with a summary of its determinations.

*A) Lompoc's Motion to Stay*

Lompoc asks the court to exercise its discretionary authority to stay the present matter pending resolution of two pending Court of Appeal actions that will directly impact the present lawsuit – namely, the propriety of the revival statute contained in Assembly Bill 218. In *West Contra Costa Unified School District v. Superior Court of Contra Costa County*, Case No. A169314, the Court of Appeal, First Appellate District, which will address the constitutionality/propriety of Assembly Bill 218, a determination that may have direct impact on the present action. It involves a writ of mandate filed by a school district, after the trial court overruled a demurrer challenging the constitutionality of Assembly Bill 218, and the issue to be addressed, at least according to Lompoc, is whether Assembly Bill 218 "was an unlawful gift of public funds as applied to claims against public entities for childhood sexual abuse which had occurred before January 1, 2009." The appellate court issued an order to show cause on February 27, 2024; all briefing has been filed, including amicus curiae briefs, and oral argument has yet to be scheduled.

In *Roe #2, a Public Elementary School District v. Santa Barbara County Superior Court*, Case No. B334707, now pending before Court of Appeal, Second District, Division Six, the petitioner public school entity filed a writ of mandate, challenging the trial court's decision to overrule a motion for judgment on the pleadings, "which [according to Lompoc] had been predicated on the fact that [Assembly Bill 218] was an unlawful gift of public funds as applied to claims against public entities for childhood sexual abuse which had occurred prior to January 1, 2009." The appellate court on March 27, 2024, requested an informal response to the petition for writ of mandate, to be filed by May 17, 2024, which has been submitted. The appellate court is currently addressing the application for a stay of the trial court prosecution. According to Lompoc, the informal response asked the party to address whether the trial court conflated the "public policy" reasons behind Assembly Bill 218 with the constitutional requirement that the appropriate of public funds serve a "public purpose"; and does the retroactive elimination of the claims presentation requirements for legally invalid claims serve a public purpose.

In reliance on *OTO, LLC v. Kho* (2019) 8 Cal.5th 111 (*OTO*), Lompoc insists this court has the discretionary power to stay the current matter pending resolution of either appellate case. As noted in *OTO*, " ' [a] court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice,'" citing *People v. Bell* (1984) 159 Cal.App.3d 323, 329.) "As the court in *Landis v. North American Co*. (1936) 299 U.S. 248 254[] explained, 'the power to stay proceeding is incidental to power inherent in every court to control the disposition of the causes on its docket with economic of time and effort for itself, for counsel, and for litigants.'" (*OTO, supra,* at p. 141.) Lompoc also relies on *Montrose Chemical Corp. v. Superior Court* (1993) 6 Cal.4th 287, which concluded, in at least the same proceeding and in order to eliminate the risk of inconsistent factual determinations that could prejudice the insured, a stay of a declaratory relief action pending resolution of the third party suit is appropriate when the coverage questions turns on the same facts to be litigated in the underlying action. (*Id*. at p. 301.) Lompoc finally relies on *Caiafa Prof. Law Corp. v. State Farm Fire & Cas.Co*. (1993) 15 Cal.App.4th 800, which concluded that it is "black letter law that, when a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the stay the state court action." (*Id*. at p. 804.)

Armed with this authority, Lompoc contends that multiple criteria articulated in those cases demonstrate why the court should stay the present matter pending resolution of the critical issues at issue in both appellate court matters detailed above. First, according to Lompoc, the only "way to ensure that the decision in this case will not conflict with the decisions in the two courts of appeal is to stay the case until those decisions have been reached." Second, Lompoc claims that the rights the parties "can best be determined by the courts of appeal because of the subject matter and the stage to which proceedings in courts have already advanced." Finally, according to Lompoc, staying the action will not prejudice plaintiff's rights.

John Doe has filed opposition. He notes that Lompoc has failed to cite to one case that mandated a stay in similar circumstances. Further, he emphasizes that at least one published appellate opinion has concluded that Assembly Bill 218, with its amendments to Code of Civil Procedure section 340.1, is constitutional, and thus there is sufficient authority to proceed forward without a stay. In *Coats v. New Haven Unified School District* (2020) 46 Cal.App.5th 415, the appellate court expressly upheld the constitutionality of Assembly Bill 218, noting that whether the issue involved the revival of a lapsed civil limitations period, or the revival of a cause of action barred by a claim presentation requirement, "we are aware of no reason the Legislature should be any less able to revive claims in this context, as it expressly did in in Assembly Bill 218." (*Id*. at p. 428.) *Coats* went on as follows:

> "In Assembly Bill 218, the Legislature has again attempted to balance the competing concerns of protecting public entities from stale claims and allowing victims of childhood sexual abuse to seek compensation. This time, the Legislature came to a different conclusion, with an express revival provision for claims against public entities as well as those against private defendants. The District attempts to cast doubt upon the constitutionality of retroactive application of the legislation by pointing to the magnitude of the changes it makes, not only adding the previously discussed provision for treble damages in cases of coverup of childhood sexual abuse but extending the statute of limitations 14 years longer than under prior law (to 22 years after the age of majority), reviving claims that have not been litigated to finality for a three-year period regardless of when the abuse allegedly occurred ("even if the abuse allegedly occurred 100 years ago"), and eliminating the protection section 905, subdivision (m), previously provided for claims arising from conduct that occurred prior to 2009. None of these changes are implicated in the present case. As we have said, there are no allegations to trigger the treble damages provision. Appellants' suit was filed when E.D. was 19 years old, well within the prior statute of limitations (eight years from age of majority). The alleged abuse last occurred only a year and a half prior to the filing of the complaint, far from the '100 years ago' invoked by the District in characterizing the amendment. And the case involves alleged abuse in 2014 and 2015, not prior to 2009. The District offers no reason for finding the claim revival provisions of Assembly Bill 218 unconstitutional." (*Coats, supra,* 46 Cal.App.5th 415, 429–430.)

Finally, John Doe contends that a stay will result in prejudice (in the form or delayed justice). Attached to its opposition are a number of trial court orders from a host of other superior courts across the state, such as Alameda, Marin, San Bernardino, Solano, Los Angeles, in which similar claims as here have been allowed to proceed to trial, including a rejection of claims now pending before the two appellate courts.

On June 25, 2024, Lompoc filed a reply. All briefing has been read.

Initially, the court grants Lompoc's request to take judicial notice of the register of actions and at least some of the documents filed in the two appellate matters at issue. John Doe does not oppose the request. Many of the documents at issue are attached to the declaration of Anthony Demaria (Exhibits A to H), which include in the Case No. 169314, the trial court complaint, the trial court order overruled the demurrer, the petition for writ of mandate filed by petitioner, the Court of Appeal docket; in Case No. B334707, the trial court order denying the motion for judgment on the pleadings, the petition for writ of mandate, the Court of Appeal docket, including the briefing requests. Attached to the declaration of Kyla Garcia are the following documents from this case: the complaint, and amendment to the complaint; request for dismissal as to the second cause of action; and the meet and confer efforts here.

On the merits, the court is not entirely persuaded that the cases cited by Lompoc support Lompoc's broad claim that this court has discretionary authority to stay the present matter pending resolution of the two Court of Appeal actions. *Caiafa*, for example, involved litigation *in state and federal courts*, looking to trial courts to "consider the importance of discourage multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts ***with courts of other jurisdictions***."" (*Caiafa Prof. Law Corp, supra*, 15 Cal.App.4th at p. 804, emphasis added, citing *Thomson v. Continental Co*. (1967) 66 Cal.2d 738, 747; see also *Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal.2d 208, 215 [discussing rules for a stay between action in this state and action pending in federal jurisdiction].) As noted more recently in *St Paul Fire and Marine Insurance Company v. Amerisource Bergen Corporation* (2022) 80 Cal.App.5th 1, the source of the court's discretionary power in this regard stems from the common law doctrine of forum non conveniens, and it with this in mind the authority to stay effectuates "the trial court's inherent power, in its discretion, to stay proceedings when such as stay will accommodate the ends of justice," citing *Landis v. North American Co., supra*. (*Id.* at pp. 13-14.) Lompoc's reliance on *Caiafa* is arguably limited, as *Caiafia* (as noted) applied the criteria relevant to lawsuits pending in two different jurisdictions.[1] *Montrose* involved the trial court's ability to stay, in the insurance context, a declaratory relief cause of action field by the insurer when there is a third party suit discussing the same coverage question before the same court. (*Id.* at p. 301.) The cases cited by *Montrose* in support of this – *California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1627-1628 and *General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 471 – suggest as much.[2]

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[1] Lompoc in reply seems to concede *Caiafa*'s direct limited application, observing that its reliance on *Caiafa* is an "argument through analogy."

[2] Neither *Montrose* nor the two cases it cited addressed the trial court's power to stay when there are different lawsuits in different counties of California, when the power to stay is not otherwise governed by the rules attendant to a plea of abatement and/or the doctrine of concurrent exclusive jurisdiction, the latter two doctrines which are inapplicable under the circumstances. (*Plant Insulation Co. v. Fibreboard Corp*. (1990) 224 Cal.App.3d 781, 887-788; *Lawyers Title Ins. Corp. v. Superior Court* (1984) 151 Cal.App.3d 455, 459; see also *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1175.) The court has not found any authority addressing the relationship between a plea of abatement/concurrent exclusive jurisdiction, mandating a

Lompoc is perhaps on more solid ground in relying on *OTO, supra*, 8 Cal.5th 111, which involved an employee's request for a Berman hearing before the Labor Commissioner, filed by the employee, and the employer's motion to compel arbitration filed in the trial court; the trial court granted the employer's motion to vacate the Labor Commissioner's award, but ultimately did not compel arbitration, finding procedural unconscionability. According to our high court, after concluding the arbitration agreement was unconscionable and thus unenforceable, it observed that the trial court erred in vacating the Labor Commissioner's decision following the Berman hearing, and addressed what the employer should have done with regard to the Berman hearing in order to pursue arbitration. "If One Toyota wished to halt the Berman proceedings while pursuing arbitration, it could have requested a stay [from the trial court staying the Berman hearing]." This is true even if the mandatory stay provisions per Code of Civil Procedure section 1281.4 did not apply, because, ultimately opined the high court in dicta, a court has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice. (*Id*. at p. 141.) It follows from these observations -- again by extrapolation -- that if the trial court had the ability to stay the Berman hearing in *OTO*, it arguably would have the ability to stay the present action pending resolution of the appellate matters, if the ends of justice are furthered. This conclusion arguably is encapsulated in the following general statement: Every court has the inherent power, in furtherance of justice, to regulate the proceedings of a trial before it; to effect an orderly disposition of the issues presented; and to control the conduct of all persons in any manner connected therewith. [Citations.] The exercise of this power is a matter vested in the sound legal discretion of the trial court, subject to reversal on appeal only in those instances where there has been an abuse of that discretion." (*People v. Miller* (1960) 185 Cal.App.2d 59, 77; see *Schimmel v. Levin* (2011) 195 Cal.App.4th 81, 87.)

In any event, the court need not decide this issue, for even if it assumes arguendo it has the discretionary power to stay the present matter as Lompoc suggests and *OTO* implies, the court finds that a stay is inappropriate at this time. There is a published case, which has concluded that Assembly Bill 218, and its changes to Code of Civil Procedures section 340.1, are constitutional and survive challenges, per *Coats, supra.*[3] The issues in the two pending appellate cases may be different adjuncts of this, as Lompoc indicates, but the court does not conclude this gloss is anything different from the situation in which the California Supreme Court grants review and examines a question of law, which may or may not impact an action then pending

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stay, as opposed to the court's discretionary authority to stay, when the other litigation is pending in another county of California.

[3] Lompoc makes the claim in reply that the public agencies will have a likelihood of success on the constitutional issues to be addressed in both appellate court matters, and this offers a reason to issue the stay. In this court's experience it is a fool's errand for trial courts to try and predict how an appellate court will resolve any given legal issue, and then proceed based on that subjective belief, particularly as we know that *Coats*, albeit generically, has rejected constitutional challenges to the Assembly Bill 218. The court is not acting on a clean slate and without direction, and it has enough direction to proceed without a stay as a result.

before trial courts. It is not routine practice to stay trial court actions when a relevant (and perhaps a dispositive point of law) is pending review before our high court; trial courts manage forward despite this reality.[4] It seems equally true that a stay is also undesirable when a dispositive legal issue is pending before an intermediate appellate court. The numerous trial court orders attached to John Doe's opposition reflect this general practice.[5]

More pointedly, the utility of a stay seems marginal at best under the specific circumstances presented, at least when weighed against the unnecessary costs of abatement. Of the two appellate cases relied upon Lompoc, it will be the Court of Appeal, First Appellate District, in Case No. A169314 that will be the first to resolution, as all briefing is in, oral argument is to be scheduled, with an appellate opinion generally issued within 90 days thereafter. We will see resolution sooner rather than later.[6] By contrast, no trial date has been set in this matter; additionally, the complaint was filed on August 5, 2022, less than two years as of this writing, and while the court is always sensitive to the rule that a trial must occur within five years of the action being filed, there is no immediate danger of this at this time. At the same time, the court can manage the case moving forward without the need for a wholesale stay. For example, the court has authority to impose a partial stay on a particular discovery request should that be warranted, on a case-by-case basis, all the while allowing other aspects of the case to develop fruitfully. Additionally, and as another example, the court can reasonably defer rulings on pretrial motions that hinge on resolution of legal issues at issue in Case No. A169314 (or deny without prejudice until appellate guidance is offered). This methodology permits the case to move forward, at the same time allowing a party the opportunity to seek relief from any particular burdensome request (as determined under the circumstances).

Accordingly, the court denies Lompoc's request for a stay of the entire action.

*B) Motion to Compel Commission*

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[4] In fact, this point may have more gravitas than it would appear at first blush. No matter how the Court of Appeal, First Appellate District determines the issue in Case No. A169314, there likely will be a petition for review, and the California Supreme Court has 90 days to determine whether to review the matter. What happens if the high court grants review? It seems best to move forward and deal with this situation at the appropriate time, rather than allow the case to languish potentially for years.

[5] Lompoc in reply indicates that the fact trial courts are issuing orders advancing cases does not undermine its claim that this matter should be stayed. While it is true, as Lompoc argues, that California trial courts are bound by relevant legal principles articulated in California published appellate decisions, the existence of numerous trial court orders shows that trial court prosecutions do not freeze simply because a dispositive legal issue is pending before an appellate court. One additional point should made here in light of Lompoc's reply. Trial courts are bound only by ***published*** appellate decisions, not unpublished decisions. At this stage we have no idea whether either appellate court will publish its decision. This uncertainty reinforces the reasons why a stay is inappropriate.

[6] Lompoc makes this point in its reply, observing "[t]he fact appears that the decision may be made in the next few months . . . ." Yet this is not an argument ***for*** a stay, however. Quite the contrary. Given the shortened time frame at issue, a stay appears more burdensome, for the court in the "next few months" can simply manage the case appropriately, cognizant that the issue is pending, without fanfare and undue prejudice.

The court will address the merits of plaintiffs "Motion to Compel California Commission on Teacher Credentialing to Produce Records Subpoenaed by Plaintiff[,]" the amended separate statement, and the Commission on Teacher Credentialing's (Commission's) opposition, as submitted by the Attorney General. No new briefing has been submitted despite the court's invitation.

Based on the new amended separate statement, it appears plaintiff is moving for an order compelling the Commission to produce the unredacted responses to the following questions from the "Application For California Life Diploma[]", Item 11, as well as his responses to the same questions from the "Application for Credential Authorizing Public School Service," Item 9 (the questions are exactly the same): "(a) "Have you ever had a diploma, credential, or certified denied, revoked or suspended? If so, explain fully"; [(b) omitted and not at issue]; "(c) Have you ever left the service of any school district without the consent of the superintendent or the governing board of such district?"; "(d) Have you ever been found guilty of immoral conduct, or dismissed from any teaching position or unprofessional conduct or for unfitness of service?"; "(e) Have you ever been found guilty of or dismissed from any teaching position for persistent defiance of or refusal to obey the laws regulating the duties of persons serving in the public school system?"; "(f) Have you ever (1) forfeited bail, or been (2) arrested, or (3) convicted, or (4) fined, or (5) jailed, or (6) placed on probation for any violation of law other than minor traffic offenses?" The Commission has otherwise produced redacted versions of the responses given.

The Commission objected initially to the production of Mr. Donowick's responses to these questions under the authority of Education Code section 44230, subdivisions (a)(1) and (2). Subdivision (a)(1) provides that the Commission may disclose "only the following information related to the credentials, certificates, permits, or other documents that it issues; the document number, title, term of validity, subjects, authorizations, effective dates, renewal requirements, and restrictions. The commission may also disclose the last known address of any applicant or credential holder." Subdivision (a)(2) provides that notwithstanding any or law, except as provided for in Education Code sections 44230.6 and 44248, "no information, other than that set forth in paragraph (1), may be disclosed by the commission absent an order from a court of competent jurisdiction." Education Code section 44230.6 provides for the collection of data, including non-personally identifiable educator identification numbers established pursuant to Education Code section 44230.5 and other student identifiers, as well as voluntary demographic data as to ancestry and ethnic origin of credential applications. Education Code section 44248 provides that any member or staff member of the Committee of Credentials, State Department of Education cannot release information received a commission or committee meeting or hearing or through the investigation of a certified employee without authorization. The court will issue an order allowing the Commission to disclose all relevant information contained in Mr. Donowick's responses to questions (a),(c),(d),(e), and (f), of Item 11 and Item 9, above.

The Commission separately objects to disclosure of two pieces or information. The first set of objections revolve around a single page copy of Mr. Donowick's official criminal offender record. Not only does the Commission emphasize a court order is required, it argues that even if a court order is issued it should not be required to disclose this single page criminal document pursuant to Education Code section 44345.5, subdivision (f)(3). Additionally, the Commission argues that it should not be required to disclose this "business record" in its possession, for it did not prepare the document, and therefore cannot authenticate it, under the authority of *Cooley v. Superior Court* (2006) 140 Cal.App.4th 1039, 1045. In *Cooley*, the District Attorney, a nonparty, in response to a deposition subpoena, argued that it was not the custodian of "business records" as contemplated by Evidence Code section 1561, for it could not attest to the record's authenticity and trustworthiness, and thus could not execute the custodian or records declaration for documents it possessed but did not produce. The *Cooley* court agreed. "Because the DA and its personnel are not in a position to make the attestations that must accompany subpoenaed business records under Evidence Code section 1561, subdivision (a)," a motion to compel should be denied. (*Id.* at p. 1041.) In particular, the Commission claims that the single page criminal history of Mr. Donowick is not the Commission's "business record" but was prepared by the DOJ's Bureau of Criminal Identification and Analysis -- the Commission is not able to attest to the "mode of preparation" and thus cannot be the custodian per *Cooley.*

The court overrules the Commission's objection to disclosure of Mr. Donowick's criminal history because Education Code section 44346.5, subdivision (f)(3) provides: "The criminal history record search response shall be provided in such a manner as to protect the confidentiality and privacy of the individual's criminal history record and the criminal history record search response shall not be made available by the commission ***to any school district or county office of education.***" Plaintiff is neither a school district nor a county office of education.

As for the Commission's objection based on *Cooley*, plaintiff (as he makes clear in his amended separate statement) is asking for an order compelling Mr. Donowick's unredacted ***responses*** to the enumerated questions concerning his professional conduct in Item 11 and item 9 of the documents at issue, as detailed above, and specifically question (d) – have you ever been found guilty of immoral conduct, or dismissed from any teaching position or unprofessional conduct, or for unfitness of service?; question (e) -- have you been found guilty of or dismissed from any teaching position for persistent refusal to obey the laws regulating the duties of persons serving in the public school system?; and question (f) – have you ever (1) forfeited bail, or been (2) arrested, or (3) convicted, or (4) fined, or (5) failed, or 96) placed on probation for any violation of law other than minor traffic offenses? His responses have nothing to do with the single page criminal history, and it would therefore appear to be nonresponsive to the request.

If, however, plaintiff is actually asking the court to look beyond the amended separate statement to order the Commission to disclose this single page copy of Mr. Donowick's official criminal offender record, authored and generated by the DOJ but simply in the Commission's possession, the Commission's *Cooley* objection will be sustained. *Cooley* requires the custodian of records or other qualified witness contemplated by Evidence Code section 1561 to be able to attest to various attributes of the records relevant to their authenticity and trustworthiness. (*Cooley*, *supra*, at p. 1044.) That is, the Commission's custodian must be able to say the document was prepared by the Commission in the ordinary course of business. (*Cooley, supra*, at p. 1041, fn. 1). The Commission cannot do that for a document generated by the DOJ. John Doe argues that *Cooley* does not require attestations to only those documents that the Commission itself created, for it that were the case, the Commission could not produce Mr. Donowick's responses. But the Commission can attest to the fact that Mr. Donowick is the one who supplied the responses at issue, offered during the ordinary course of the Commission's business, and thus can attest to how the document was made. It cannot do that with the DOJ document; *Cooley* precludes the Commission, as a nonparty, for disclosing the document as a result. Plaintiff is not without recourse – he can go directly to the DOJ for the document.[7]

In their opposition the Commission also objects to disclosure of four (4) pages of Mr. Donowick's undergraduate and graduate transcripts in its possession. The Commission argues that it is not required to disclose these four (4) pages because in the context of third party discovery, as here, discovery is more limited. (See, e.g., *Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366, fn. 6 [the permissible scope of discovery in general is not a broad with respect to nonparties as it is with respect to parties].) Specifically, these transcripts are confidential (presumably, at least under the California state constitutional privacy right, although the Commission does not rely on any authority in its briefing), and the burden, notably in the context of third party discovery, is on the plaintiff (as here) to provide good cause evidence from which the court can determine whether the documents themselves are admissible or whether the four (4) pages will lead to the discovery of admissible evidence. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223-224 [reading into the statutory scheme involving nonparties these requirements].) The Commission claims good cause has not been shown, and thus, the court should preclude disclosure of these four (4) pages.

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[7] To be clear, plaintiff can ask the Commission whether it had any knowledge that Mr. Donowick had dangerous propensities prior to injuring plaintiff, which appears relevant to what Lompoc knew or should have known, and Mr. Donowick's prior criminality seems an appropriate subject. But that topic is not what is at issue in the current discovery contretemps, which is limited exclusively to Mr. Donowick's ***responses*** to questions asked in Item 11 of the "Application for California Life Diploma" and Item 9 of the "Application for Credential Authorizing Public School Service[,]" based on the amended separate statement. Plaintiff cannot be seen to expand the scope of discovery once he has tethered the motion to compel to those documents and to Mr. Donowick's responses to those 10 questions in possession of the Commission.

John Doe does not address this issue in his amended separate statement, which is what the court looks to in order to frame the issues. In any event, it is hard to see why these four (4) pages of transcripts are relevant *to the current dispute as framed in the amended separate statement, which (as noted) limits the court's inquiry*. It has already been observed in footnote 7, *ante*, that the current motion to compel is limited to Mr. Donowick's responses to questions (a), (c), (d), (e), and (f), in Item 11 of the "Application for California Life Diploma" and in "Item 9" of the Application for California Life Diploma," as framed in the amended separate statement. The inadequate separate statement initially filed by plaintiff was the reason the matter was continued. If the limitations in the current amended separate statement are not what plaintiff contemplated, a more comprehensive amended separate statement should have been submitted.

Even if the court were to set aside these concerns and look beyond the limits of the amended separate statement, the Commission's insistence on a showing of good cause in order to justify the disclosure of these four (4) pages is appropriate. The general rule for inspection demands of a party (when a motion to compel further responses has been filed) is that the moving party must show good cause for the document disclosure, based on specific facts. That being said, in *Calcor*, the court's point was that discovery from a nonparty should be at least as rigorous for a nonparty; the burden is therefore on the moving party to show a reason for the disclosure, and the burden placed on a nonparty is not outweighed by the extremely limited relevance in the documents. If a nonparty is exclusively in possession of relevant documents that otherwise meet California liberal discovery standards, there is no basis for delaying the discovery. Plaintiff fails to address any of this; indeed, the court is not told whether Lompoc itself has the information, or why plaintiff cannot go to the learning institutions themselves to obtain the information. As plaintiff has failed to address relevance or good cause, the Commission will not be required to disclose the four (4) pages at issue.

*C) Summary of Court's Conclusion With Respect to Both Motions*

- The court denies Lompoc's motion to stay the present proceeding. The court will allow the parties on an ad hoc basis to request a partial stay of certain events if appropriate.
- As for plaintiff's motion to compel the Commission to produce records, the dispute before the court, *as framed by the amended separate statement (see Section II(A))*, is limited to disclosure of Mr. Dominick's ***redacted responses*** to questions (a),(c),(d), (e), and (f) in Item 11 of the document entitled "Application for California Life Diploma[,]" and the same five questions in Item 9 of the documented entitled "Application for Credential Authorizing Public School Service[.']" The court will issue a court order directing the Commission to provide Mr. Dominick's unredacted responses to those 10 questions. The court will issue a protective order to protect any confidential information if requested .

- That being said, the Commission objects to the disclosure of a "single page copy" of a criminal offender record (presumably summarizing Mr. Donowick's criminal record) in its possession, although created and generated by the California Department of Justice's Bureau of Criminal Identification and Analysis. Initially, it is not clear to the court how this "single page" record is responsive to any of the 10 questions that are in dispute (again, as framed by the amended separate statement); if it is not, disclosure is beyond the scope of plaintiff's motion. In any event, even if plaintiff intended this to be part of the court's inquiry despite the limitations advanced in the amended separate statement, the court overrules the Commission's objections to its disclosure based on Education Code section 44346.5(f)(3), but sustains its objections to its disclosure based on *Cooley v. Superior Court* (2006) 140 Cal.App.4th 1039. Unless Mr. Donowick responded to any of the ten questions with reference to the single page document (which seems most unlikely), disclosure is not required. Plaintiff will have to go directly to the Department of Justice's Bureau of Criminal Identification and Analysis to seek the document.
- The Commission also objects to disclosure of four (4) pages of Mr. Donowick's undergraduate and graduate transcripts in its possession. Again, it is not clear to the court how the information contained in these transcripts is relevant to Mr. Donowick's responses to the 10 questions at issue, as discussed above. Plaintiff in fact does not discuss this document at all in its amended separate statement. In any event, even if the court were to set these concerns aside, plaintiff has failed to explain either relevance or good cause, including why he cannot obtain these documents through other channels. Accordingly, the Commission will be not be required to disclose these (4) four pages.
- Plaintiff is directed to provide a proposed order for signature commensurate with the court's determinations, after consulting with Commissioner's counsel about form and content.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information/Superior Court of California/County of Santa Barbara.)