COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT

 CIVIL ACTION NO. 2016-00969

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 )

MASSACHUSETTS ASSOCIATION OF COURT )

INTERPRETERS, INC., MOUSSA ABBOUD, )

SOLEDADE GOMES DEBARROS, ANAHIT )

FLANAGAN, NORMA V. ROSEN-MANN, and )

MICHAEL R. LENZ, individually, and on behalf )

of other persons similarly situated, )

 )

Plaintiffs, )

 )

v. )

 )

EXECUTIVE OFFICE OF THE TRIAL COURT, )

 )

Defendant. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF**

**MOTION TO COMPEL DISCOVERY**

1. **Legal Standards**
	1. **The Rules of Civil Procedure**

If a document request is not answered in full or in part, or if objections are raised, or if there has been any other failure to permit inspection as requested, the party requesting documents may move, pursuant to Mass. R. Civ. P. 37(a)[[1]](#footnote-1), to compel a response where there has been an objection in whole or in part to the request[[2]](#footnote-2).

Except for documents covered by the work product protection of Rule 26(b)(3) and/or Rule 26(b)(4), the relevance standard of Rule 26 is all that the requesting party must meet. Subject to this one exception, the non-moving/objecting party bears the burden of proof in justifying its nonproduction[[3]](#footnote-3).

Mass. R. Civ. P. 34 permits a party to request production of any designated documents which constitute or contain matters within the scope of Mass. R. Civ. P. 26(b)[[4]](#footnote-4) and which are within the possession, custody or control of the party upon whom the request is served[[5]](#footnote-5). Discovery is permitted of any nonprivileged documents or things relevant to the pending action

and reasonably calculated to lead to the discovery of admissible evidence[[6]](#footnote-6). Discovery is limited neither to issues raised by the pleadings nor the merits of the case[[7]](#footnote-7).

A party may request production of any type of document or electronically stored information, including those expressly listed in Rule 34(a)(1)(A): “writings, drawings, graphs, charts, photographs, sound recordings, images, and other data compilations” “stored in any medium from which information can be obtained directly or, if necessary, after translation by the responding party into a reasonably usable form.”[[8]](#footnote-8) The rule is so broad that virtually any and every type of document or tangible item is subject to production. For instance, courts have discretion to order discovery of complaints made by other employees.[[9]](#footnote-9)

* 1. **Relevancy**

Section 401 of the Massachusetts Guide to Evidence (2018) states:

“Evidence is relevant if

(a) it has any tendency to make a fact more or less probable than it would be without the evidence and

(b) the fact is of consequence in determining the action.”

Massachusetts law accords relevance a liberal definition. See *Commonwealth v. Fayerweather*, 406 Mass. 78, 83 (1989) (“rational tendency to prove an issue in the case”); *Commonwealth v. Vitello*, 376 Mass. 426, 440 (1978) (“renders the desired inference more probable than it would be without the evidence”).

The concept of relevancy has two components: (1) the evidence must have some tendency (probative value) to prove or disprove a particular fact, and (2) that particular fact must be material to an issue (of consequence) in the case. *Harris-Lewis v. Mudge*, 60 Mass. App. Ct. 480, 485 (2004).

1. **CONCLUSION**

For the aforesaid legal authority, Plaintiffs respectfully pray that their Motion to

Compel Discovery be granted.

 Respectfully submitted,

Massachusetts Association of Court Interpreters, Inc. (MACI), Norma V. Mann, individually, and in her capacity as President of MACI, Moussa Abboud, Soledad Gomes DeBarros, Anahit Flanagan, and Michael R. Lenz, PLAINTIFFS

Dated: February 15, 2021 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 **CERTIFICATE OF SERVICE**

 I, Alan Jay Rom, hereby certify that a copy of the above Memorandum in Support of Plaintiffs’ Motion to Compel was served on defendant by sending a copy both electronically and by first-class mail, postage pre-paid, to Katherine B. Dirks, Esq., Assistant Attorney General, Government Bureau/Trial Division, One Ashburton Place, Room 1813, Boston, Massachusetts 02108, this 16th day of Febuary, 2021.

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 Alan Jay Rom

1. See *Theidon v. Harvard University*, 2016 WL 2901730, \*1 (D. Mass. 2016) (Sorokin, J.) (ordinarily a party cannot move to compel responses to a document request before the time to respond has elapsed). [↑](#footnote-ref-1)
2. See Mass. R. Civ. P. 34(b). [↑](#footnote-ref-2)
3. See *Kozlowski v. Sears, Roebuck & Co.*, 73 F.R.D. 73, 22 Fed. R. Serv. 2d 1008 (D. Mass. 1976). [↑](#footnote-ref-3)
4. The request must be framed in compliance with Mass. R. Civ. P. 26(b)(1), which generally provides that a party may obtain discovery of non-privileged matter “relevant to the subject matter involved in the pending action ….” Discovery will be denied where the requested documents are not relevant. See *Wells Fargo Bank, N.A. v. Mistovich*, 85 Mass. App. Ct. 1115, (2014) (Rule 1:28 Order) (trial court denied defendants' request to compel production of documents where plaintiff had produced its entire file regarding defendants' loan and the collection activity on the loan, noting that defendants' second and third requests were both duplicative and irrelevant and it appeared that defendants “have scoured other cases for every conceivable document request that could be served upon the plaintiff, in spite of the fact that the requests have nothing to do with this lawsuit alleging default on a home equity loan”; the Appeals Court affirmed, reiterating that the conduct and scope of discovery rests within the sound discretion of the trial court and stating that parties may not fish for evidence during discovery), review denied, 469 Mass. 1104, 15 N.E.3d 761 (2014). [↑](#footnote-ref-4)
5. See Mass. R. Civ. P. 34(a). [↑](#footnote-ref-5)
6. Mass. R. Civ. P. 26(b)(1) and (2) provides as follows:

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding *any matter, not privileged, which is relevant to the subject matter involved in the pending action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis supplied) [↑](#footnote-ref-6)
7. See *Cronin v. Strayer*, 392 Mass. 525, 534 (1984). [↑](#footnote-ref-7)
8. See Mass. R. Civ. P. 34(a)(1)(A). See generally *Dzung Duy Nguyen v. Massachusetts Institute of Technology*, 30 Mass. L. Rptr. 57, (Mass. Super. Ct. 2012) (Tuttman, J.) (ordering production of statistical data by MIT related to student treated for suicidal ideation and who subsequently committed suicide while at MIT, but only to extent MIT had such data already compiled; to extent such data does not exist, MIT would not be ordered to create it). [↑](#footnote-ref-8)
9. See, e.g., *Papandrea v. Northeast Sec., Inc.*, 1996 WL 1186919 (Mass. Super. Ct. 1996) (Borenstein, J.) (defendant ordered to produce files of all employees who had complained of sexual harassment); *Afrow v. Cumberland Farms, Inc*., 1996 WL 1185115 (Mass. Super. Ct. 1996) (Butler, J.) (plaintiff allowed access to information regarding other claims of discrimination), aff'd, 426 Mass. 1006, (1997); *Doe v. Bechtel Corp.*, 4 Mass. L. Rptr. 32 (Mass. Super. Ct. 1995) (Doerfer, J.) (discovery allowed as to other claims of sexual harassment by a particular supervisor). [↑](#footnote-ref-9)