UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v

GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of the Michigan State Police, in their individual capacities,

Defendants.

No. 2:22-cv-10209

HON. MARK GOLDSMITH

MAG. CURTIS IVY, JR.

PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF FACTS

FACTS RE ADMISSIBILITY OF DEFENDANTS' EVIDENCE

A. Defendants rely on inadmissible evidence in their fact statement and response to Plaintiffs' facts. Plaintiffs object to that evidence, *see* Fed. R. Civ. P. 56(c)(2), and thus first set out the facts on admissibility that inform their answers.

B. Defendants' expert reports do not comply with Fed. R. Civ. P. 26(a)(2)(b), which requires disclosure of prior publications, prior testimony, and compensation.[1]

C. **Anna Salter** is a psychologist who evaluates whether people with mental abnormalities are likely to commit violent predatory new sex offenses. Salter does not do research and she is not an expert on sex offender registration. Salter Dep., ECF No. 125-18, PageID.5469, at 24, 39-48, 100, 152-153, 161-163.

D. Salter's three books on sexual offending (the most recent of which was published 20 years ago and was written in the first person) are not academic works, but are aimed at a general audience, treatment providers, or clinicians. Her book *Predators*, which provides advice on how parents can protect their children from sexual abuse, never mentions the registry. *Id.*, PageID.5499-5500, 5503-5504.

E. Salter has written that her purpose in interviewing offenders is to become better at "testifying against them." Salter, A., *Predators: Pedophiles, Rapist, and Other Sex Offenders*, Basic Books, 2003, at 7. She is hired by and testifies for the

[1] Pursuant to ECF No. 116, PageID.3567, Plaintiffs note the failure to comply with Fed. R. Civ. P. 26 as evidence of these experts' lack of competence.

state in "sexual predator" civil commitment proceedings and for prosecutors in criminal proceedings. She cannot remember the last time she recommended a person for release. Salter Dep., ECF No. 125-18, PageID.5475, at 46, 51-53, 75-76.

F. While Salter challenges the Static-99R's accuracy, she admits it is one of the most widely used risk assessment tools, that she uses it, and that it more accurately predicts recidivism than relying on convictions. Salter Dep., ECF No. 125-18, PageID.5472, at 33-36. She concedes that if practitioners "override" actuarial assessments, they degrade results by overestimating recidivism. *Id.*, PageID.5488, at 98.

G. The Australian Institute of Criminology criticized Salter's work for reporting on research in a way that is "strictly speaking . . . correct," but that omits key findings and promotes misconceptions. ECF No. 125-26, PageID.5657. Other courts have found Salter not to be a credible or objective witness. *See*, *e.g. U.S. v. Graham*, 683 F. Supp. 2d 129, 144-146 (D. Mass. 2010); *K.M. v. S.M.M.*, No. FM-07-1254-06, 2001 WL 3176534, at *24 (Sup. Ct. N.J. Jul 28, 2011); *State v. Tjernagel*, 895 N.W.2d 922, at *4 (Iowa 2017); *In re Schuman*, No. EQCV047108 (Story Cnty Iowa, Aug. 17, 2022) (ECF No. 125-25, PageID.5633-5634, 5641, 5648).

H. **Darryl Turner** is a psychologist who primarily does sex offender risk assessments and serves as an expert witness. His focus is on "sexually violent predators" in civil commitment proceedings, many of whom have psychopathic personality disorders. They make up a tiny fraction of registrants. He has done some research,

but not on sexual recidivism of registrants. He is not an expert on sex offender registries, and "certainly [doesn't] feel comfortable speaking to them as an expert." Turner Dep., ECF No. 126, PageID.5670, at 29-30, 47-52, 74, 154-55.

I. **Rachell Lovell** is a victimologist who studies gender-based violence and has never been qualified as an expert. She has no experience with sex offender registration or recidivism. She describes her work, which focuses on sexual assault kits (SAKs), as "novel"—one of only two published peer-reviewed studies concerning SAKs and repeat offending (the other is by Defendants' expert Goodman-Williams). No other scholars have done similar studies or replicated their results. Lovell Dep., ECF No. 125-16, PageID.5361, at 12, 65-68, 87, 205-06, 234-41.

J. Despite Plaintiffs' discovery requests, Defendants failed to provide publicly unavailable research relied on by Lovell in her report, preventing Plaintiffs from examining Lovell about her methodology at her deposition. Plaintiffs objected on the record to any use of portions of the report derived from the undisclosed research. Lovell Decl., ECF No. 128-19, PageID.6989, ¶ 9 n.24 (citing to the research that was not provided); Lovell Dep., ECF No. 125-16, PageID.5362, at 15, 166-168.

K. Lovell testified that her report "isn't about people on registries." *Id.*, PageID.-5407, at 194. Most of the people in her dataset did not have past sex offense convictions. If a SAK was associated with a past conviction, it was excluded. *Id.*, PageID. 5399, at 163-166 173-75, 187, 218-19. Lovell did not seek to do any analysis based

on *registrants'* DNA samples. *Id.*, PageID.5364, at 22; PageID.5398, at 160.

L. Lovell concedes that SAK findings "aren't generalizable to all sexual offenders" or even to all rapes. Lovell Dep., ECF No. 125-16, PageID. 5406, at 192. SAKs cannot be done unless numerous preconditions are met and can only be used in certain kinds of cases, mostly contemporaneously-reported violent crimes which require medical care and disproportionately involve strangers—a high-risk, unrepresentative group. *Id.*, PageID.5406-07, 5370-5371, 5383-5395, 5406-5408, 5409.

M. **Rachael Goodman-Williams'** work also focuses on SAKs, victim reporting rates, and case attrition. She has no experience with sex offender registration and has never been qualified as an expert. Goodman-Williams Dep., ECF No. 125-17, PageID.5424, at 9, 22, 24.

N. Goodman-Williams admits that SAKs can only be collected in certain circumstances, that conclusions about registrants generally cannot be drawn from SAK data, and that the SAK studies do not provide information on reoffending *after* conviction. Goodman-Williams Dep., ECF No. 125-17, PageID.5450-5452, 5455-57.

O. She admits that some surveys she cites were given to non-representative samples of high-risk offenders in max-security prisons and mental health facilities who had multiple convictions, *id.*, PageID.5442, at 83-84, and that reoffense rates from samples of institutionalized sexual psychopaths "can't be generalized" to registrants. *Id.*, PageID.5450, at 114-115. She agrees that some studies she cited "shed

zero light" on whether undetected offending declines after conviction. *Id.*, PageID.-5447, at 103. Her report emphasizes underreporting and case attrition, but fails to link that to the registry. She admits that "none of the features [that cause under-reporting or case attrition] has anything to do with the registry"). *Id.*, PageID.5433.

P. Three of Defendants' lay witnesses—**Danielle Bennetts, Tricia Dare, and Sarah Prout Rennie**[2]—offer opinion testimony about recidivism and reoffending, statistics and studies, and the utility of SORA for victims, despite not having the expertise to opine on these topics. Ex. 154, Defs' Lay Witness Decls. with Inadmissible Statements Highlighted. For example, Ms. Dare, a prosecutor, says she reviewed Plaintiffs' experts' declarations, and then offers her own opinions to rebut them, even though she lacks the relevant expertise. Dare Decl., Ex. 129-4, PageID.-7571. Portions of these declarations are also without foundation. Ex. 154.

Q. **Sharon Jegla** is an analyst for the MSP Sex Offender Registration Unit. She has no training in statistics or regression analysis. Data analysis does not fall within her job duties, and the reports for her affidavits were the first of their kind that she ever ran. When inconsistencies between her report and the data were brought to her attention, she could not explain why the numbers were different. Sometimes this was because a vendor ran the numbers, as she was unable to do so. She could not explain the unusually large numbers of victims whose ages were listed in the data as 0 or 25,

[2] Defendants call her Ms. Prout, whereas Plaintiffs' experts call her Ms. Rennie.

and admitted that victim ages in her chart were not all accurate. The numbers in her affidavit reflect approximately one-third the number of adult victims in the class data, but she could not explain why. Though she swore her affidavits were based on personal knowledge, she ran only a fraction of the data herself. Jegla Dep., ECF No. 126-4, PageID.5862, at 8, 12, 27, 32-36, 41-44, 48-50, 59-60, 66-67, 72-74, 80, 88.[3]

R. For the reasons set out in Pls' Resp. Brf., § XIV, Plaintiffs lodge a *standing objection* to Defendants' statements that rely on inadmissible testimony from Defendants' experts, and from their lay witnesses Bennetts, Dare, Prout and Jegla.

PLAINTIFFS' ANSWERS TO DEFENDANTS' FACT STATEMENT

I. COUNT I – RETROACTIVE IMPOSITION OF PUNISHMENT

1. SORA is intended to protect children and others from the commission of potential future offenses by registrants. Mich. Comp. Laws § 28.721a.

Admit that the purpose statement in M.C.L. § 28.721a was added to SORA in 2002 after registries, including Michigan's, were challenged as unconstitutional. It has not been updated since. Admit that when SORA was originally adopted in 1994, legislators likely believed that registrants posed a permanent danger to society and that SORA would protect the public.

Deny insofar as this statement suggests that SORA 2021 is not motivated by animus. What was plausible in 1994 or 2002 was no longer so by 2021. Legislators adopted SORA 2021 despite knowing that the law is not evidence-based, creates a pariah class, and does not serve its stated purpose. Legislators still

[3] Jegla didn't know (a) whether there were totals that were run that were excluded from the report, (b) which numbers she ran and which the vendor ran, (c) whether the numbers may have counted a victim more than once, (d) where the numbers came from for one of her charts, (e) whether one of her charts counted people or occurrences, or (f) what parameters she used to get the numbers on her charts. *Id.*

adopted SORA 2021 because they feared the political cost of appearing soft on a reviled group. *See* Pls' Facts, ECF No. 123-1, PageID.3728-4732, 3833-3837.

2. Data from Michigan's Sex Offender Registry confirms the overwhelming number of registered offenders have sexually harmed children.

Admit that many registrants have committed offenses against victims under age 18. Unable to admit or deny that registrants overwhelmingly harmed children because the percentage of registrants with offenses against children is unknown. The victim age data in the registry is unreliable, and therefore victim age cannot be calculated. Data limitations also mean one cannot calculate the number of victims (which is a different calculation than the number of offenses involving children), much less the number of registrants with offenses against children. Data Rept., ECF No. 123-6, PageID.3977-3978, ¶¶ 87-90.

3. As of January 25, 2023, there were approximately 43,995 sex offenders on Michigan's public and private registries. (Ex. K, Jegla Affidavit, ¶4.)

Admit as to "approximately." As of January 24, 2023, there were some 45,145 people on Michigan's online or private registry. Data Rept., ECF No. 123-6, PageID.3952, ¶ 1. Some 44,154 registrants live, work, or go to school in Michigan. *Id.* The remaining 991 registrants moved out of state but remain subject to SORA. *Id.*; M.C.L. § 28.723(3).

4. Of those [Defendants' estimate of] 43,995 offenders:

- 16,793 sexually assaulted children under the age of 13 (38.17%);
- 14,745 sexually assaulted children between the ages of 13–17 (33.51%);
- 4,657 sexually assaulted an adult (10.58%). (*Id.*)

Unable to admit or deny. The answers to ¶¶ 2-3 are incorporated by reference. Even if one uses Jegla's numbers, her calculations are unreliable for the reasons set forth in ¶ Q, *supra*. Further, there are a wide range of offenses, not just sexual assault, that result in registration, including sexual activity with underage teens. The age of consent in Michigan is 16. M.C.L. § 750.520d(1)(a).

5. National studies show that approximately one in five women and one in thirty-

three men experience attempted or completed rape at some point in their lives. (ECF No. 128-20, PageID.7015, 7017; ECF No. 128-19, PageID.6985; Ex. B, Declaration of Danielle Russo Bennetts, ¶8.)

Admit that the annual National Crime Victimization Survey shows basically what Defendants allege.[4] But there is a wide range of estimates of victimization rates. Estimates vary depending on the sample population chosen, the definitions of sexual victimization used, and the methodological choices made. (For example, the study Defendants cite defined rape to include sex between intimate partners who were both drunk where neither could legally consent.) Socia Rebuttal, ECF No. 123-13, Page ID.4432, 4448-49. Although victimization rates decreased after 1995, there is no dispute that sexual crime remains widespread.[5]

6. Some studies report that 2 out of 3 rapes still go unreported. (Ex. B, Bennetts Declaration, ¶19.) [Sic – should be ¶ 20.] Those are only penetration-based crimes.

Admit that sex crimes, like almost all crimes, are underreported. The extent of underreporting is unclear, and reporting rates appear to be increasing. Hanson Rebuttal, ECF No. 123-8, PageID.4187, ¶ 28; PageID.4197, ¶ 49. Estimates of underreporting vary by the type of sex crime committed. *Id.* They also depend on the population sampled, definition of sexual victimization used, and other methodological choices. Socia Rept., ECF No. 123-11, PageID. 4339-4340. There is no evidence that underreporting is greater for offenses by registrants versus non-registrants. Hanson Rebuttal, ECF No. 123-8, PageID.4187, 4193-4194, ¶¶ 28, 38-42.

Admit that some studies report the rates asserted. Bennetts' inadmissible statement cites information from the advocacy group RAINN, which cites to a Bur-

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[4] Lovell says one in every 38 (not 33) men. ECF No. 128-19, PageID.6985. Bennetts says one in every 6 (not 5) women. ECF No. 129-5, PageID.7576, ¶ 8.

[5] The rate of sexual violence against females aged 12 and up declined 58% between 1995 and 2010 from 5.0 per 1,000 females in 1995 to 2.1 per 1,000 in 2010. DOJ, Bureau of Justice Statistics, Female Victims of Sexual Violence, 1994-2010 (2013), at 1, Table 1, *https://bjs.ojp.gov/content/pub/pdf/fvsv9410.pdf*.

eau of Justice Statistics survey. That study (updated in 2016) shows that reporting rates can vary markedly over time.[6] Also, contrary to what is asserted, the data appears to be for both rape *and* other sexual assaults (with "sexual assault" defined to include unwanted sexual contact and verbal threats).[7]

7. When considering sexual assault broadly, one in three women and one in four men will be victims of a sexual assault crimes at some point in their lifetimes. (ECF No. 128-20, PageID.7017.)

Admit that the study cited found numbers in this range. The study defined "contact sexual violence" to include "unwanted sexual experiences involving touch… such as being kissed in a sexual way," or being groped or grabbed, as well as unwanted sex "after a person is pressured in a nonphysical way," including "being worn down by someone who repeatedly asked for sex or showed they were unhappy; feeling pressured by being lied to, being told promises that were untrue, having someone threaten to end a relationship...."[8]

8. According to the Department of Justice, an American is sexually assaulted every 68 seconds. (Ex. B, Declaration of Danielle Russo Bennetts, ¶ 7.)

Unable to admit or deny for lack of information. Bennetts' inadmissible statement cites the advocacy group RAINN for the "every 68 seconds" number. But RAINN relies on a National Crime Victimization Survey (NCVS) report which says nothing about how often sexual assaults occur. Rather, it provides data about the number of offenses reported in the annual NCV survey. That survey defines sexual assault to include unwanted sexual contact and verbal threats.[9]

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[6] **"The percentage of rape or sexual assault victimizations reported to police increased to a high of 59% in 2003 before declining to 32% in 2009 and 2010." *Id.* at p 1, 7, Tables 8 and 9.**

[7] ***Id.* at 2, 7, and Table 8.**

[8] ***The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief—Updated Release*, Centers for Disease Control and Prevention, at 1, https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf.**

[9] **Bureau of Justice Statistics, *Criminal Victimization, 2019* (2020), p. 6 n.4,**

Plaintiffs admit that sexual offenses occur frequently.

9. The societal costs of sexual assault are multifaceted and profound, extending far beyond the immediate physical and emotional impact on survivors. In fact, rape is the second most expensive violent crime after homicide. (ECF No. 128-19, PageID.6994.) The total cost to victims of rape is estimated to be between $100,000 and $300,000 per rape. (ECF No. 128-19, PageID.6994.)

Admit that the societal costs of sexual assault are multifaceted and profound.

Deny as to the specific dollar figures and financial comparisons asserted. Socia Rebuttal, ECF No. 123-13, PageID.4446 (discussing potential problems with dollar figure calculations and noting that cost estimates for rape cannot be generalized to other sex crimes). "On its face, the conclusion that preventing sexual offending would result in cost savings is not controversial.... What *is* controversial is the use of these cost estimates as justification for the sex offender registry. Nothing in the Lovell report provides any evidence that the *registry* reduces sexual offending." *Id.*, PageID.4446-47. Society has a strong interest in preventing sexual offending, both by registrants and non-registrants. But recognizing the harm of sexual offending does not answer the question of why people remain on registries when they are as safe as the general public. Nor have Defendants introduced *any* evidence to show registries reduce sexual victimization and the resulting costs. Hanson Rebuttal, ECF No. 123-8, PageID. 4187, ¶26; Hanson Dep., ECF No. 125-3, PageID.5054, at 144-45; 5055-56, at 149-50; Socia Rebuttal, ECF No. 123-13, PageID.4446-47.

10. Sexual assault has a significant physical and emotional impact on survivors that last throughout their lives. Mary Roe, who is a licensed therapist, explained that sexual assault impacts victims in all their major life areas and often requires mental

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https://bjs.ojp.gov/content/pub/pdf/cv19.pdf.

health services. (ECF No. 125-11, PageID.5236, p. 24:12–26:8.)

Admit that sexual crime can have such impacts on some survivors. While this is also true of many other crimes (e.g., assault, drunk driving), the parties agree that sexual offending can cause serious harm. The justice system recognizes this harm by imposing punishment, which is often severe. Hanson Rebuttal, ECF No. 123-8, ¶ 26. A primary motivation for the research of experts like Drs. Hanson and Letourneau has been to find evidence-based ways to prevent sexual crime and to address the harm it causes. Hanson Dep., ECF No. 125-3, PageID.5037, at 74-75; Letourneau Rept., ECF No. 123-9, PageID.4217, ¶¶ 2-4.

Deny to the extent Defendants suggest all survivors have the same experiences. There is a huge variation in sexual offenses that result in registration, as well as variation in the impact of those offenses on victims. Hanson Rebuttal, ECF No. 123-8, PageID.4186, ¶ 26. Defendants present victims as a homogeneous group, but survivors' experiences and needs vary. Baliga Rept., ECF No. 123-17, PageID.4618-20, ¶¶ 45-53 (describing the variation, e.g., under-age teens may not view themselves as harmed by the person with whom they had sex); Mary Roe Dep., ECF No. 125-11, PageID.5235-36, at 22-29; Letourneau Dep., ECF No. 125-4, PageID.5088, at 31-32, PageID.5093, at 52; Doe E Nephew Decl., ECF No. 125, PageID.4957 (victim attesting that he doesn't want Doe E on the registry). IG, who was the victim of Doe C's crime, and later married and had children with him, said that while SORA may have been intended to protect people like her, it has had the opposite effect. The registry has prevented her from having a normal life with Doe C and their children, and makes her feel not like a crime victim but a "victim of the criminal justice system." Am. Compl., ECF No. 108, PageID.2787, ¶ 62; *Does I* Jt Stmt of Facts, ECF No. 128-15, PageID.6725, ¶¶ 134-35; IG Decl., ECF No. 123-28, PageID.4811, ¶¶ 2-3, 6.

11. Victims often experience depression, struggle with trusting relationships, subject themselves to substance abuse, and engage in self-harming behaviors. (Ex. A, Dare Affidavit, ¶15-16.)

Admit in part and deny in part for the reasons set out in the answer to ¶ 10, incorporated by reference.

12. Sexual assault is the most underreported violent crime in the United States.

(ECF No. 128-19, PageID.6987; ECF No 128-21, PageID.7058; Ex. B, Declaration of Daniele Russo Bennetts, ¶2.)

Admit that sexual assault is underreported. Neither admit nor deny that sexual assault is the most underreported violent crime because, as set out in the answer to ¶ 6, incorporated by reference, the extent of the underreporting is unclear. Hanson Rebuttal, ECF No. 123-8, PageID.4187, ¶ 28. Some research suggests that except for robbery, there is no statistically significant difference between reporting of rape/sexual assault and other violent crimes.[10] The primary source of information on underreporting is surveys. As Defendants' experts admit, surveys vary in methodology, definition of sexual assault, population being surveyed, and time period covered, resulting in varying estimates of underreporting. Salter Decl., ECF No. 128-21, PageID.7058.

13. Out of every 1,000 sexual assaults:

- 310 are reported to police (31%).
- 50 reports lead to arrest (5%).
- 28 cases will lead to a felony conviction (2.8%).
- 25 perpetrators will be incarcerated (2.5%). (Ex. L, Prout Declaration, ¶15.)

Admit that sexual offenses are underreported, and that NCVS studies have found "attrition" (meaning that not all reported crimes result in conviction or incarceration) in this range. Case attrition in part reflects the fact that our criminal justice system seeks to ensure that only the guilty are convicted. There is no evidence that underreporting or case attrition rates are higher for registrants than non-registrants. Hanson Rebuttal, ECF No. 123-8, PageID.4187, ¶¶ 28-29; Socia Rebuttal, ECF No. 123-13, PageID.4450-51, 4454; Chartier Rept., ECF No. 123-21, PageID.4714, ¶¶ 41-55.

Ms. Prout cites only the advocacy group RAINN, which notes that its website's statistics combine data from studies using different methodologies. Those statistics are "not a scientific estimate," and are "for educational purposes only."[11]

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[10] Bureau of Justice Statistics, *Reporting Crime to the Police, 1992-2000*, at 2 (2003), https://bjs.ojp.gov/content/pub/pdf/rcp00.pdf.

[11] https://www.rainn.org/statistics/criminal-justice-system. RAINN's website shows case attrition rates are also high for other crimes (e.g., robbery).

14. According to Justice Department data, sexual assault survivors do not report to the police because:

- 20% feared retaliation.
- 13% believed the police would not do anything to help.
- 13% felt it was a personal matter.
- 8% believed it was not important enough to report.
- 7% did not want to get the perpetrator in trouble.
- 2% believed the police would not do anything to help. (Ex. L, Prout Declaration, ¶ 16.)

Admit that NCVS studies have so found. There are many reasons victims do not report sexual crimes, including a desire to protect the person who offended, fear of disrupting family/friends, a desire for privacy, distrust of the criminal justice system, etc. Because most sex crimes are committed by someone the victim knows, registries can discourage reporting as survivors may hesitate to shame people they know, or may fear that they will be "outed" as victims when their perpetrator's name and address is posted on the registry. Baliga Rept., ECF No. 123-17, PageID.4604-4610, ¶¶ 14-26.

Ms. Prout cites the RAINN website, but not the underlying NCVS study.[12] Admit that this study includes the numbers above for female victims for the 2005-2010 time period, in response to a survey that defines "sexual assault" to include unwanted sexual contact and verbal threats.

15. As of June 23, 2023, there were 5,308 registrants with more than one criminal sexual conduct conviction. (Ex. O, Seldon Declaration, ¶11.)

Admit that Ms. Selden-Manor so states. (The underlying data was not provided to Plaintiffs.) As she acknowledges, she did not index offenses or do cohort analysis (looking at groups of people with similar release dates), *see* ECF 129-18, PageID.7754-55, which is necessary to calculate recidivism rates, as explained in the expert Data Rept., ECF No. 123-6, PageID.3962, ¶¶ 48-61.

[12] **Female Victims of Sexual Violence, *supra* note 5, at 7, Table 9.**

16. Many sex offenders are repeat offenders. After studying data collected from previously untested sexual assault kits (SAK), experts in their field reported conclusions about the extent and nature of repeated sexual assault offending. Over 35% of the 1,270 sampled SAKs in Wayne County had two or more sexual assaults linked by DNA. (ECF No. 128-19, PageID.6988.)

Unable to admit or deny, as the terms "many," "sex offenders," and "repeat offenders" are not defined. As Defendants admit, there is a meaningful difference between offending multiple times *before* a criminal justice sanction, and offending again *after* a criminal justice sanction, which is what is at issue in this case. Defs' Resp. to Pls' Facts, ECF No. 129-2, PageID.7563; Hanson Rebuttal, ECF No. 123-8, PageID.4195-4197, ¶¶ 43-48; Letourneau Dep., ECF No. 125-4, PageID.5100, at 78-79; Socia Rebuttal, ECF No. 123-13, PageID.4444-4445.

The Wayne County study cited did not contain data on reoffending after a criminal justice sanction because it did not track DNA "hits" for sexual crimes committed *after* conviction versus before. Goodman-Williams Dep., ECF No. 125-17, PageID.5456, at 137. The study uses the term "sex offenders" to mean people who are DNA-linked to sexual crimes, not to mean convicted people. The study is thus irrelevant to registrants, who by definition have been convicted.

Admit that for all crime, including sexual crime, some people offend more than once *before* being caught and convicted. The SAK research, however, cannot be generalized to all categories of sexual crime even when estimating the likelihood that a person will offend multiple times *before* conviction. DNA sampling requires that the crime be reported, that the victim seek hospital treatment within a few days and be willing to undergo a lengthy physical exam, that DNA be recovered, and that the sample be good enough to be used for DNA matching. Socia Rebuttal, ECF No. 123-13, PageID.4440-44; Lovell Dep., ECF No. 125-16, PageID.5386 *et seq.* Thus, "SAKs are more likely to be collected in the more violent types of [crimes]" and historically in some jurisdictions only for "penetrative assaults" where there was "a possibility of foreign bodily fluid recovery." *Id.*, at PageID.5388. The Wayne County study looked at kits from 14 to 44 years ago, typically from the most violent penetrative assaults often involving strangers, in a city with one of the highest historical crime rates in the country. Its findings cannot be generalized to describe Michigan's 45,000 registrants.

Socia Rebuttal, ECF No. 123-13, PageID.4441-43.

17. This is consistent with Dr. Goodman-William's determination that approximately 40% of sexual perpetrators are serial sexual offenders. (ECF No. 128-20, PageID.7042, 7043.)

Deny. Response to ¶ 16 is adopted by reference.

18. The likelihood of someone committing criminal sexual conduct does not change significantly with age. Tricia Dare, who has 25 years as a prosecutor with the Oakland County Michigan Prosecutor's Office has prosecuted many cases where the perpetrator was at least 60 years old. (Ex. A, Dare Affidavit, ¶9.)

Admit that Ms. Dare has prosecuted an unknown number of sex-crime cases against defendants over age 60.

Deny that the likelihood of committing a sex crime does not change significantly with age. Both parties' experts agree that offense rates for crime, including sexual crime, decline with age. Hanson Rebuttal, ECF No. 123-8, PageID.4183, ¶ 17 (citing Defendants' experts); Hanson Rept., ECF No. 123-7, PageID.4021, ¶ 26, PageID.4033, ¶ 47; Hanson Dep., ECF No. 125-3, PageID.5031, at 52. Indeed, sexual crime declines to such a degree with age that the original Static99 had to be re-normed to give more weight to age, as longer-term data revealed the drop-off in risk over time. *Id*. at PageID.5044-45.

19. In 2005, M.R. was convicted under 18 U.S.C. 2422B for coercion and enticement of a minor. (ECF No. 125-15, PageID.5347, p. 42:14.)

Admit.

In ¶¶ 19-33, Defendants describe the crimes of two random class members[13] out

[13] **NWD is no longer on the registry. Both a state court judge and a judge of this Court granted his petitions for removal finding him not a risk to the public.**

of 45,000. Conduct resulting in registration varies greatly. Data Rept., ECF No. 123-6, PageID.3976, ¶ 85 (84% of registrants with Michigan convictions living in the community have convictions for something other than criminal sexual conduct in the first degree). Defendants describe these two class members' offenses in detail without explaining why their individual conduct is relevant, without any evidence that it is representative, and without any facts about why—after being punished—they still require ongoing supervision.

Were this a jury trial, such evidence would likely be excluded under Fed. R. Evid. 403 as more prejudicial than probative given the danger that it would lead to a "decision on a purely emotional basis." Fed. R. Evid. 403, Advisory Comm. Notes. The facts about these two class members' offenses have little if any probative value. All they show is that sex crimes can involve disturbing conduct—a fact not in dispute. The conduct described warrants criminal punishment, which these two class members and all other class members have received. But the issue in this case is not whether people who commit sexual crimes should be punished, but whether they should be subject to registration for decades or for life regardless of risk or rehabilitation, and even though SORA is ineffective or counterproductive in reducing sexual recidivism.

20. Leading up to his arrest, during online chats with an undercover agent, he expressed his desires to engage in sex with [sic] who he thought was a 12-year-old girl. (Ex. H, FBI Affidavit, ¶ 7.)

Admit the affidavit so states. The answer to ¶ 19 is incorporated by reference.

21. In 2023, M.R. stated under oath in his deposition that he was not sexually attracted to 14-year-old females (he was referring to the time around his arrest). (ECF No. 125-15, PageID.5347–5348, p. 43:25; 45:4–5.)

Admit. The answer to ¶ 19 is incorporated by reference.

22. In his 2023 deposition under oath, when asked whether he was aware that the adult woman planned to involve her juvenile daughter in the sexual relationship,

M.R. stated that he knew that the daughter would be involved "in some undefined way" but that he was only interested in having sex with the adult woman. (ECF No. 125-15, PageID.5348, p. 45:12–20.)

Admit. The answer to ¶ 19 is incorporated by reference.

23. According to the FBI affidavit that was used to seek an arrest warrant, M.R. "inquired if there was a possibility of a '3 some' with the mother and daughter" and was "looking for items to purchase for Laci" throughout the course of several chat online chat sessions. (Ex. H, FBI Affidavit, ¶ 6, 17.)

Admit the affidavit so states. The answer to ¶ 19 is incorporated by reference.

24. At the time of M.R.'s arrest, police found condoms and lingerie for the 12-year-old child with M.R. (Ex. H, Plea Agreement, ¶ 16.)

Admit the agreement says this. The answer to ¶ 19 is incorporated by reference.

25. After his arrest M.R. stated that he had fantasies about having sex with children. (Ex. H, FBI Affidavit, ¶ 20.)

Admit the affidavit so states. The answer to ¶ 19 is incorporated by reference.

26. After his arrest M.R. admitted to receiving child pornography. (Ex. H, FBI Affidavit, ¶ 20.)

Admit the affidavit says this. The answer to ¶ 19 is incorporated by reference.

27. NWD was arrested for child pornography. (Ex. I, Criminal Complaint and Affidavit ¶ 14.)

Admit. The answer to ¶ 19 is incorporated by reference.

28. NWD has an autism spectrum disorder.

Admit. The answer to ¶ 19 is incorporated by reference.

29. NWD was a dean of students at a high school. (Ex. J, NWD Sentencing Memo, p. 2.)

Admit. The answer to ¶ 19 is incorporated by reference.

30. NWD's house was raided by the FBI, and NWD stated that he had been downloading and viewing images of child pornography for several years, and he knew possessing images of child pornography was illegal. (Ex. I, Criminal Complaint and Affidavit ¶ 14.)

Admit. The answer to ¶ 19 is incorporated by reference.

31. A year and a half prior to his arrest, NWD's parents found child pornography on his computer and told him it was illegal. (Ex. J, NWD Sentencing Memo, p. 3.)

Admit. The answer to ¶ 19 is incorporated by reference.

32. Four or five months prior to the raid, NWD lied to his parents when they asked him whether he was still involved with child pornography. (*Id.*)

Admit. The answer to ¶ 19 is incorporated by reference.

33. After the investigation was complete it was determined that NWD possessed approximately 243 digital images and 44 digital movies of child pornography. (Ex. J, NWD Sentencing memo, p 3.)

Admit. The answer to ¶ 19 is incorporated by reference. Defendants fail to

mention that for a crime with a guideline range of about 8-10 years, the federal prosecutor accepted a plea agreement of 1 day time served and 5 years' probation. NWD Judgment, ECF No. 129-16, PageID.7714-15. The parties came to that agreement because "experts for the government and for the defendant … concluded that [he] is a low risk of reoffending." Govt. Sentencing Memo, ECF No. 129-13, PageID.7688. In other words, unlike SORA, the criminal justice system engaged in an *individualized assessment* for this autistic defendant.

34. Examples of other criminal sexual conduct that lead to registrants being subject to SORA is equaling disturbing. (Ex. G, Summary of various offenses.)

Admit in part and deny in part. The answer to ¶ 19 is incorporated by reference. Detailed accounts of crimes—whether sex crimes, non-sexual assaults, drunk driving crashes, drug-induced deaths, etc.—can be disturbing. But they have little probative value here. Fed. R. Evid. 403. The relevant question is not whether registrants have done blameworthy acts in the past, but whether they will do so in the future. The data shows that of registrants who have returned to the community following their initial registrable offense conviction, about 93% have never been convicted of a subsequent registrable offense. Data Rept., ECF No.123-6, PageID.3963, ¶ 52. Moreover, registrants are subject to SORA for a wide range of offenses, from very serious crimes to sexual activity with a willing underage partner. "Not everyone on the registry looks like the least dangerous named Plaintiffs in the case and not everyone looks like the most dangerous offenders highlighted by Defendants' experts." Hanson Rebuttal, ECF No.123-8, PageID.4187, ¶ 27.

35. The new SORA mirrors the federal SORNA in all material respects.

Deny. This statement reflects a misunderstanding of SORA, SORNA, and the relationship between the two. Plaintiffs set out the factual and legal framework here at length, as this framework is necessary to understand why the statement above and many other statements below about SORNA are incorrect.

SORA imposes criminally enforced restrictions on people with sex offenses who live, work, or study in Michigan. M.C.L. § 28.721 *et. seq*. SORNA, by contrast, incentivizes states to adopt certain features in their state registry laws. 34 U.S.C. § 20927. SORNA also provides for individual criminal liability *but only where there is federal jurisdiction*. 18 U.S.C. § 2250(a); 28 C.F.R. § 72.8(a). "SORNA has a dual character," encouraging states to adopt certain registry features and

criminalizing certain conduct if there is federal jurisdiction. 86 Fed. Reg. 69856 (Dec. 8, 2021). *See* Pls' Resp. to Mot. to Dismiss, ECF No. 44, PageID.1591-1595.

SORNA Tried to Incentivize SORNA-Congruent Registries, But Most States Rejected SORNA. "[F]ederal sex-offender registration laws have, from their inception, expressly relied on state-level enforcement." *Carr v. United States*, 560 U.S. 438, 452 (2010). "In enacting SORNA, Congress preserved this basic allocation of enforcement responsibilities," *id.* at 453, but "used Spending Clause grants to encourage States to adopt . . . uniform definitions and requirements" for state registries. *United States v. Kebodeaux*, 570 U.S. 387, 398 (2013). *See* 34 U.S.C. § 20927(a) (withholding 10% of Byrne grant funds if states do not "substantially implement" SORNA).

Thus, SORNA sets out the federal government's preferred registration provisions and incentivizes states to adopt those provisions locally. But it is a state's "sovereign prerogative" to "choose[] not to comply with SORNA." *United States v. Felts*, 674 F.3d 599, 604 (6th Cir. 2012). Congress "did not"—and could not—"insist that the States" adopt SORNA-based laws. *Kebodeaux*, 570 U.S. at 398.

Congress' effort to incentivize states to adopt SORNA-based laws largely failed. Thirty-two states—a substantial majority—have rejected SORNA.[14] While all states have registries, they vary greatly in who is subject to registration, who is on the online registry, what the reporting requirements are, the length of time that people spend on the registry, and whether registration is based on individualized assessments.[15] *See* Amer. Law Inst., *Model Penal Code*, § 213, at 516-520,

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[14] Department of Justice, SORNA Implementation Status, https://smart.ojp.gov/sorna/sorna-implementation-status.

[15] States using some form of risk-based assessments include Arkansas, California, Georgia, Massachusetts, Minnesota, Montana, New Jersey, New York, North Dakota, Oregon, Rhode Island, Texas, Vermont, and Washington. See, e.g., Ark. Code Ann. § 12-12-917 (2016); Cal. Penal Code § 290.04 (West 2017); Ga. Code Ann. § 42-1-14 (2016); Mass. Gen. Laws ch 6, §§ 178C-178Q (2015); Minn. Stat. Ann. § 244.052 (2017); Mont Code Ann § 46-23-509 (2015); NJ Stat Ann § 2C:7-8 (West 2016); NY Correct. Law § 168-l (McKinney 2017); ND Cent. Code § 12.1-32-15 (2015); OECF No. Rev. Stat. §§ 163A.100, 163A.105 (2015); RI Gen. Laws § 11-37.1-6 (2016); Tex. Code Crim. Proc. Ann. Art 62.007 (West 2016); Vt. Stat. Ann. tit. 13, § 5411b (2016); Wash. Rev. Code §§ 72.09.345, 4.24.550 (2017).

536-37, Ex. 146; Weisberg Decl., ECF No. 123-24, PageID.4770, ¶ 27.

States have rejected SORNA for a several reasons. First, the costs of implementing SORNA dwarf the ten-percent reduction in Byrne grant funds lost by not adopting a SORNA-congruent registry. Amer. Law Inst., *Model Penal Code*, § 213, at 536, Ex. 146; Letourneau Rept., ECF No. 123-9, PageID.4233-36 ¶¶ 17-18; Zgoba Rept., ECF No. 123-15, PageID.4533-35 ¶¶ 5-11; Dylan Scott, *States Find SORNA Non-Compliance Cheaper*, GOVERNING (Nov 7, 2011), Ex. 147. A study by the National Conference of State Legislatures found that it was "more costly—in every state—to implement SORNA than to lose 10 percent of [Byrne grant] funding." Nat'l Conference of State Legislatures, *Cost-Benefit Analyses of SORNA Implementation,* Ex. 148; *Does I* Jt Stmt of Facts, ECF No. 128-15, PageID.6747-48. The annual cost of Michigan's registry is at least $10 to $11 million and may be as high as $16 to $17 million, not counting costs for local police (who handle much of the reporting/enforcement), for probation, or for the prosecution, defense, and judicial processing of SORA violations. Levine Rept., ECF No. 123-18, PageID.4629, ¶¶ 15, 17, 34–40, 60–76. The cost of SORA thus far exceeds the loss of ten percent of Byrne Grant funding. (In 2020, that would have been about $516,500 (10% of a $5,165,727 grant).[16]

Second, states have rejected SORNA out of concern for the "public safety impacts of supplanting established risk-based classification systems with a less discriminating system linked exclusively to conviction offense."[17] Harris et al, *Widening the Net: The Effects of Transitioning to Adam Walsh Act's Federally Mandated Sex Offender Classification Scheme*, 37 CRIM. JUST. & BEHAV. 503, 504 (2010), Ex. 149. SORNA-based systems also "reduce[] capacity for law enforcement and the public to distinguish risk levels of registered individuals." *Id.* at 506. In addition to concerns about SORNA's lack of individual review, some states object that SORNA-based regimes require children to register. Weisberg Decl., ECF No. 123-24, PageID.4769, ¶ 25.

The American Law Institute, in developing a model registration statute, likewise rejected the federal SORNA's "broad, inflexible sweep of collateral-consequence sanctions," finding them "unjust and counterproductive" based

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[16] DOJ Office of Justice Programs, *Michigan's FY 2020 Byrne Justice Assistance Grant* (Sept. 2020), https://bja.ojp.gov/funding/awards/2020-mu-bx-0011.

[17] Risk assessment instruments are far better at predicting recidivism than using the offense of conviction. Pls' Facts, ECF No. 123-1, PageID.3768-74.

on an exhaustive analysis of the research. Am. Law Inst., Model Penal Code, § 213, at 537, Ex. 146.

SORNA and Substantial Compliance

Only 18 states—including Michigan—have passed laws that are "substantially compliant" with SORNA. Virtually all "substantially compliant" jurisdictions have registries that diverge from SORNA.[18] For example, the most recent available review for Michigan (for the 2011 law) found that Michigan substantially implemented SORNA despite not meeting SORNA guidelines in various ways (e.g., what offenses result in inclusion in online registry, tiering of offenses, registration of youth in diversion programs, etc.). Michigan Substantial Implementation Review, Ex. 150. Because SORNA requires only "substantial implementation," not complete implementation, states can continue to receive grant funds despite diverging from SORNA. 34 U.S.C. § 20927(a).

The federal government, in determining whether a jurisdiction has "substantially implemented" SORNA, must also consider whether the jurisdiction is unable to substantially implement SORNA due to judicial rulings that the state's law is unconstitutional. 34 U.S.C. § 20927(b). After the Sixth Circuit's decision in *Does I* and the injunctions in *Does II*—including a temporary almost complete suspension of SORA enforcement—the federal government determined that Michigan was still substantially compliant. SORNA Letters, Ex. 151; Morris Dep., ECF No 126-8, PageID.6034, at 129.

The Absence of a Federal Registration Mechanism. Because states are free to adopt their own registration schemes, the "requirements of SORNA may or may not overlap" with state law. *Felts*, 674 F.3d at 604. The federal government does not maintain its own registry. There is no way to register directly with the federal government. Nor does the federal government provide any notice about any federal obligations. State registration schemes are the only way for registrants to report and to be notified about registration requirements. There is also no way for registrants to report information not required by the state. *See* Morris Dep., ECF No. 126-8, PageID.6036, at 137-39; Sex Offense Litigation and Policy Resource Center, *SORNA 2022: A Guide for Practitioners to New*

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[18] Department of Justice, *SORNA Implementation Status*, https://smart.ojp.gov/sorna/sorna-implementation-status (accessed Dec. 20, 2023). For deviations from SORNA by "substantial implementation" states, scroll down and click the state's "implementation review."

Federal SORNA Regulations Effective January 7, 2022 **(2022), https://bit.ly/3GiQQbI. For example, when the *Does II* court held registration of pre-2011 registrants to be unconstitutional, the MSP told law enforcement not to accept verifications from those registrants, making it impossible for them to report "federally" even if they tried to do so. MSP Enforcement Memo, Ex. 153.**

People Not on State Registries Are Also Not on the National Registry. The national registry simply compiles information provided from state registries. 86 Fed. Reg. 69856 (Dec. 8, 2021); *Dept. of Pub. Safety & Corr. Servs. v. Doe*, 94 A.3d 791, 812 (Md. 2014). People who are not on a state registry because their state has not implemented or has deviated from SORNA are not on the national registry. In Michigan, when a registrant "has no further obligation to register in the state of Michigan," MSP's SOR Unit "shall ensure [the national registry records] are cancelled." SOR Policy 304, ECF No. 127-14, PageID.6560.

A person who is removed from Michigan's registry is also removed from the national sex offender registry *regardless of whether SORNA guidelines for state registries would indicate that such a person should register.* For example, even though a SORNA-congruent registry would require registration of youth who complete diversion programs, 73 Fed. Reg. 38039-40, Michigan has removed youth who complete such programs from Michigan's registry, and thus also from the federal registry. Morris Dep., ECF No. 126-8, PageID.6036, at 137-39. Similarly, under SORNA standards, people convicted of consensual sodomy with a person under 18 must register for life, whereas SORA requires them to register for 25 years. Michigan Substantial Implementation Review, at 2, Ex. 150. After year 25, there is no way for such a person to register in Michigan.

SORNA Requirements for Individual Registrants Where There Is Federal Jurisdiction. In passing SORNA, Congress not only wanted to incentivize states to adopt certain types of registration statutes, but also wanted to ensure that registrants would not "fall through the cracks of a state registration system." *Kebodeaux*, 570 U.S. at 405 (ALITO, J., concurring). Thus SORNA, in addition to incentivizing *states* to adopt certain registry provisions, also made it a federal crime for *individuals* to fail to register, but only where there is federal jurisdiction. *Carr*, 560 U.S. at 446. The goal of the federal penalty provision was not to supplant the states' primary role, but to provide for federal enforcement where the federal government "has a direct supervisory interest" or where individuals "threaten the efficacy of the statutory scheme by traveling in interstate commerce." *Id*. at 453. Registrants can be prosecuted federally for failure to register but *only* if they (a) have a federal or tribal conviction, or (b) travel

in interstate commerce. 18 U.S.C. § 2250(a).

The absence of a federal registration system, the fact that most states have not implemented SORNA, and the fact that even "substantially compliant" states diverge from SORNA, complicates federal enforcement. *Felts*, 674 F.3d at 605 (noting that differences between state and federal law can make it impossible for registrants to comply with SORNA). Where a state doesn't require a person to register, or doesn't require a registrant to provide certain information, there is no criminal liability under SORNA. 28 C.F.R. § 72.8, example 2; 86 Fed. Reg. 69859; *Kebodeaux*, 570 U.S. at 398 ("as far as we can tell, while SORNA punishes violations of its requirements (instead of violations of state law), the Federal Government has prosecuted a sex offender for violating SORNA only when that offender also violated state-registration requirements").

Similarities and Differences Between SORA and SORNA. The 2011 SORA amendments were adopted in part because Michigan wanted to have a SORNA-congruent registry. *See* House Fiscal Agency Legislative Analysis, Senate Bills 188, 189, 206 (2011). Many of the features that both the Sixth Circuit in *Does I* and the Michigan Supreme Court in *Betts* identified as punitive (e.g., tiering without individual review, continuous updating of extensive amounts of information, in-person lifetime reporting) were precisely the features added to SORA in 2011 to make the law SORNA-congruent. 2011 Mich. Pub. Acts 17, 18.

At the same time, there are significant differences between the two laws. *See People v. Betts*, 968 N.W.2d 497, 519 n.27 (Mich. 2021) (noting that like the old law, the new amended SORA deviates from SORNA). The differences include:

- **Unlike SORNA, SORA enables members of the public to track registrants by subscribing to notifications about them. M.C.L. § 28.730(3).**
- **SORA requires all children over age 14 to register for any Tier III offense, M.C.L. § 28.722(a)(iii)-(iv). States can be "substantially compliant" with SORNA even if they don't require juvenile registration, 81 Fed. Reg. 50552-53 (although SORNA suggests juvenile registration for offenses comparable to or more severe than aggravated sexual abuse, 18 U.S.C. § 2241).**
- **SORA mandates revocation of probation, parole, or youthful trainee status for a violation. M.C.L. 28.729(5)-(7). SORNA does not. 28 C.F.R. § 72.8(b).**
- **Unlike SORNA, SORA requires payment of initial and annual registration fees. Nonpayment can lead to prison. M.C.L. §§ 28.725a(6), 28.729(4).**

- **Unlike SORNA, 34 U.S.C. § 20916(a)(c), SORA 2021 allows email addresses and other internet identifiers to be posted on the public registry website. *Compare* 2020 Mich. Pub. Act 295, § 8(3), *with* 2011 Mich. Pub. Act 18, § 8(3)(e); *see Lymon*, 993 N.W.2d at 39 (noting change).**
- **Unlike SORNA, SORA requires registrants to maintain a driver's license or ID card. M.C.L. § 28.725a(7).**
- **SORNA incentivizes states to impose penalties with a maximum greater than one year. 34 U.S.C. § 20913(e). SORA imposes penalties up to ten years. M.C.L. § 28.729(1)(c).**
- **SORA requires the registry to include the person's original charge when convicted of a lesser offense. M.C.L. § 28.728(1)(n). SORNA focuses only on the offense of conviction. 34 U.S.C. § 20914(b)(3).**
- **SORA has additional documentation requirements. *See, e.g.*, M.C.L. § 28.724a(5) (requiring "written documentation of employment status, contractual relationship, volunteer status, or student status").**
- **SORA requires a registrant who "intends" to temporarily reside at any place other than his/her residence for more than 7 days to report in advance. M.C.L. § 28.725(2)(b). SORNA only requires reporting where a person "is staying." 28 C.F.R. § 72.6(c)(2).**
- **Unlike SORNA, SORA 2021 requires reporting of nicknames (not just names and aliases). *Compare* M.C.L. § 28.728(2)(a) *with* 28 C.F.R. § 72.6(a).**
- **While SORNA incentivizes states to have an online registry that posts certain registrant information, 34 U.S.C. §§ 20920, 20927, Michigan has chosen to build a website whose "design, language, and functionality ... represent each person listed as a current danger to society," rather than simply posting accurate public record information. Lageson Rept., ECF No. 123-14, PageID.4484, ¶¶ 12-13.**

36. The parties in the last round of litigation over SORA agreed that "the new SORA removes or modifies all provisions that this court found to be unconstitutional in its February 14, 202[0] opinion in *Does II*." (ECF No. 7, PageID.880.)

Deny. This statement is untrue (and is also not found in the *Does II* document Defendants cite). After SORA was amended, the *Does II* Plaintiffs decried the "legislature's abject failure to pass a statute that responds to the judicial

rulings," and said that SORA 2021 "fails to address many of the constitutional deficiencies identified by [the district court] and the Sixth Circuit and [] in some respects makes the law even more punitive and unclear." *Does II*, 2:16-cv-13137, Pls' Mot. for Judg., ECF No. 107, PageID.2144. Judge Cleland cited that passage from Plaintiffs' briefing when making the statement quoted by Defendants. *Id.*, Order Granting Mot. for Judg., ECF No. 121, PageID.2448. He then noted that while Plaintiffs argued that the new law is unconstitutional, "the new version will need to be addressed in a subsequent and separate lawsuit," and therefore a final judgment should enter in *Does II*. *Id.* Defendants' suggestion that the *Does II* plaintiffs believed or conceded that SORA 2011's unconstitutional provisions had been removed in SORA 2021 is false and misleading.

37. The new SORA does not include exclusionary zones.

Admit.

38. There is no statutory limitation on where a resident may reside, work, or remain.

Deny. **While SORA itself no longer contains geographic exclusion zones, other federal, state, and local laws restrict where people subject to SORA can reside, work, or remain. *See*, *e.g.*, 42 U.S.C. § 13663; Prescott Rept., Attach. 1, Consequences Triggered by SORA, ECF No. 123-10, PageID.4298-07.**

39. The information required by registrants to report to law enforcement, is factual information about the registrant.

Admit.

40. The information required by registrants to report that is posted on the public facing website is accurate factual information.[19]

Admit that registrant-reported information posted on the online registry is factual (though whether it is accurate may depend on, for example, how quickly

[19] Search - Michigan Sex Offender Registry (mspsor.com)

mail-in updates are entered by law enforcement). Deny to the extent this statement suggests that the online registry conveys only facts to its users.

41. The specific underlying facts about the criminal sexual conduct conviction that led to someone being publicly identified as a sex offender are not listed on the public facing website. (e.g., it is not disclosed that M.R. traveled across state lines with the intention of engaging in sexual activity with [someone] whom he thought was a 12-year-old child that he purchased lingerie for (Ex. H, FBI Affidavit, ¶ 7; Ex. H, Plea Agreement, ¶ 16); *it is not disclosed that when* John Doe G was 36 years old when he sexually assaulted a 14-year-old boy, who was the son of his best friend, with whom John Doe G was living with at the time (ECF No. 125-9, PageID.5194–5195); nor is it disclosed that Ms. Doe had sex with the minor child victim between five and twenty times while he was staying in her marital home during the minor child's process to become an Orthodox Jew (ECF No. 125-10, PageID.5216–5217, p. 45:8–46:11.).)

Admit.

42. Neither the email addresses nor internet identifiers of registrants are included on the public facing sex-offender website.

Admit that as of December 28, 2023, registrants' email addresses and internet IDs were not posted on the online registry. But their email addresses and internet IDs can be posted online at any time because SORA 2021 *permits* what the old SORA prohibited—publishing email and instant message addresses on the online registry. *Compare* 2020 Mich. Pub. Act 295, § 8(3), *with* 2011 Mich. Pub. Act 18, § 8(3)(e); *see Lymon*, 993 N.W.2d at 39 (noting change).

43. There is nowhere on the public sex-offender website for individuals to post comments about registrants which are viewable by the public.

Admit. However, the public can and does easily share, repost, and comment on information about registrants (in two clicks: copy, paste). *See*, *e.g.*, KM Decl., ECF No. 124-12, PageID.4886-88, ¶¶ 9, 12 (registry page shared on social media where people posted comments and tagged his business); DK Decl., ECF No. 124-7, PageID.4859, ¶ 10 (member of Facebook group shared registry map displaying address and photo of DK); AJ Decl., ECF No. 124-6, PageID.4852, ¶ 5 (coworker printed out AJ's registry page and mailed it to their company); DM Decl., ECF No. 124-10, PageID.4877, ¶ 7 (stranger created and distributed a magazine-style publication listing registrants and their photos and labeling them predators, including DM); WC Decl., ECF No. 124-2, PageID.4852-53, ¶ 5 (terminated after his registry information was found by a coworker and sent to his employer); Pls' Facts, ECF No. 123-1, PageID.3804-06 (more examples).

44. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they move. *See* Exhibits H, M and N.

Admit that registrants—like many parolees and probationers—are not barred from doing, or are not required to do, the things set out in ¶¶ 44-52, 54-59, and 63-65. As the attached SORA, Probation, & Parole Comparison Chart (Exhibit 152) shows, there are both similarities and differences between SORA requirements and probation/parole requirements. Probation/parole requirements are individualized, while SORA requirements are not. Probation/parole restrictions vary greatly depending on what the court or parole board decides is appropriate for the person, and can include conditions that are more or less restrictive than those in SORA. The Sample Probation Order, ECF No. 128-18, PageID.6978, for example, does <u>not</u> require reporting of information that is reportable under SORA (e.g., vehicles, schools, emails, phone numbers).

Probationers/parolees may or may not have the restrictions that Defendants list in ¶ 44 and the following paragraphs. *See id.* (one-year probation order that does not impose any of the conditions defendants list in ¶¶ 44-50, 54-65; only one initial in-person meeting is required, with all other reporting by phone or zoom). Probation/parole orders may or may not require pre-approval for life changes. For example, the Sample Probation Order, *id.,* does not require pre-approval of address or employment changes, but rather—like SORA—requires

only notification of such changes.

Other similarities and differences between SORA and parole/probation include:

- **All have ongoing supervision and reporting. Parole/probation terms are usually two to four years and can be less. SORA is for decades or life.**
- **Parolees and probationers can be discharged early. Registrants, with very limited exceptions, have no way to be removed from the registry.**
- **Probation/parole conditions can be contested or appealed, and may be relaxed over time. SORA conditions are fixed.**
- **Violations of parole/probation are discretionary. However, for even a technical SORA violation, revocation of parole/probation is mandatory.**
- **SORA, probation, and parole all impose supervision fees.**

SORA, Probation, & Parole Comparison Chart, Ex. 152.

Some states explicitly recognize the similarity between registration and parole by providing the same compensation for each year that a wrongfully convicted person spends on parole or the sex offender registry. *See, e.g.*, Colo. Rev. Stat. § 13-65-103(3)(a)(II) (2022); Idaho Code § 6-3503(1)(b) (2021); Kan. Stat. Ann. § 60-5004(e)(1)(B) (2018); Minn. Stat. § 611.365(2)(a) (2019); Wash. Rev. Code § 4.100.060(5)(b) (2013); D.C. Code § 2-423.02(a)(1)(A)(ii) (2017).

45. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they drive a different vehicle. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

46. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they attend a new school. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

47. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they obtain a new email address. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

48. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they get a new phone number. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

49. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they get a new job. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

50. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they start to date someone with a minor child. *See* Exhibits H, M and N.

Admit. The answer to ¶ 44 is incorporated by reference.

51. Unless it is a probation or parole requirement, registrants do not need to obtain approval from law enforcement before they leave the judicial district. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference. Further, the Sample Probation Order, ECF No. 128-18, PageID.6978, only requires pre-approval to leave the state. It doesn't require the probationer to report travel within the state (as registrants must do for travel longer than 7 days, M.C.L. § 28.725(2)).

52. Unless it is a probation or parole requirement, registrants are not required to work regularly. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

53. Unless it is a probation or parole requirement, registrants are not prohibited from possessing a firearm. (*Id.*)

Deny. State and federal laws restricting possession of firearms can apply to registrants, probationers, and parolees independent of any probation/parole requirements. *See*, *e.g.*, 18 U.S.C. § 922(g); M.C.L. § 750.224f. The answer to ¶ 44 is also incorporated by reference.

54. Unless it is a probation or parole requirement, a registrant is not required to attend and pay for sex offender diagnostic evaluations. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

55. Unless it is a probation or parole requirement, a registrant is not required to attend and pay for polygraph examinations. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

56. Unless it is a probation or parole requirement, a registrant is not required to be subjected to regular drug testing. *See* Exhibits H, M and N.

Admit. The answer to ¶ 44 is incorporated by reference.

57. Unless it is a probation or parole requirement, a registrant is not required to support their dependents. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

58. Unless it is a probation or parole requirement, a registrant is not required to refrain from the excessive use of alcohol. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

59. Unless it is a probation or parole requirement, a registrant is not required to refrain from viewing pornography. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

60. Unless it is a probation or parole requirement, a registrant is not required to notify third parties of their risk occasioned by their criminal record and personal characteristics. (*Id.*)

Deny. Registrants are required to report information that is then posted on the online registry, which conveys (to the entire world) that the person is a current risk based on their criminal record. M.C.L. §§ 28.725, 28.727, 28.728(2). The answer to ¶ 44 is also incorporated by reference.

61. Unless it is a probation or parole requirement, a registrant is not required to affirmatively disclose their conviction. (*Id.*)

Deny. M.C.L. § 28.727(1)(n) requires reporting of convictions which are then posted online. M.C.L. §28.728(2)(g). *See also* Registration Form, ECF No. 126-17, PageID.6205, § XI. Answers to ¶¶ 44 and 60 are incorporated by reference.

62. Unless it is a probation or parole requirement, a registrant is not prohibited from frequenting places where children congregate. *See* Exhibits H, M, and N.

Deny. As a result of being subject to SORA, registrants are barred under various federal, state, and local laws, as well as the policies of private entities, from frequenting places where children congregate. Consequences Triggered by SORA, Prescott Rept., Attach. 1, ECF No. 123-10, PageID.4298-4307 (listing examples). The answer to ¶ 44 is also incorporated by reference.

63. Unless it is a probation or parole requirement, a registrant is not required to consent to unannounced examinations of all their computer systems. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

64. Unless it is a probation or parole requirement, a registrant is not required to provide their computer passwords to law enforcement. (*Id.*)

Admit. The answer to ¶ 44 is incorporated by reference.

65. Unless it is a probation or parole requirement, a registrant is not required to provide access to their financial information and billing records to law enforcement. (*Id*.)

Admit. The answer to ¶ 44 is incorporated by reference.

66. The new SORA does not include exclusionary zones.

Admit.

67. There is no statutory limitation on where a resident may reside, work, or remain.

Deny. The response to ¶ 38 is incorporated by reference.

68. The new SORA allows certain information to be updated by mail. (ECF No. 126-18, PageID.6210–6212.)

Admit. But mail-in verifications don't generate proof of reporting or receipt, so many registrants are unwilling to risk being charged for failing to verify. *See* e.g., Doe F Dep., ECF No. 125-8, PageID.5166, at 29 (not worth the risk that reporting document will get lost in the mail or misfiled).

69. The new SORA includes a willfulness requirement for reporting violations. Mich. Comp. Laws § 28.729.

Admit. But because registrants are forced to attest that they understand SORA, prosecutors can argue that almost every violation is willful. Registration Form, ECF No. 126-17, PageID.6208.

70. The new SORA encourages victims to come forward, which helps protect the public from the commission of potential future crimes. (Ex. A, Dare Affidavit, ¶11.)

Deny. SORA can discourage victims from coming forward, thereby undermining public safety. Letourneau Dep., ECF No. 125-4, PageID.5100, at 79-80; Baliga Rept., ECF No. 123-17, PageID.4604-10, ¶¶ 14-26 (summarizing research).

71. The registry is important for victims. "Victims prioritize not just the safety for themselves, for safety of others, and notifying a perpetrator of sexual assault to others in the community is part of that safety to others. Many victims state that they never want to see someone else victimized by their offender, and they view the registry as a proponent to potentially saving others. Many victims state that they have come forward to report their assault to law enforcement solely to prevent future assaults to others. In this vein, the registry protects the public." (Ex. B, Bennetts Declaration, ¶19.)

Deny. Some of the statements above are based on this lay witness' inadmissible opinions, or generalize beyond her own experience, to opine on what all or most victims want. Victims are not a monolithic group who all feel the same way; rather, different survivors have different views. Baliga Rept., ECF No. 127-17, PageID.4618-21, ¶¶ 45-54. The answer to ¶ 70 is incorporated by reference.

72. The costs of rape have a high societal cost of $100,000–$300,000 per victim. (ECF No. 128-19, PageID.6994.)

Admit that rape (however defined) has societal costs as well as costs to victims. Deny that the dollar figures can be calculated in any meaningful generalized way, as every crime is different. Socia Rebuttal, ECF No. 123-13, PageID.4446. The response to ¶ 9 is incorporated by reference.

73. The majority of victims of sexual assault are children. Where the victim age is known: 16,793 are under the age of thirteen, 14,745 are between the ages of thirteen and seventeen; and 4,657 are adult victims. (Ex. K, Jegla Affidavit.)

Deny. The response to ¶ 4 is incorporated by reference.

74. Michigan substantially implements federal SORNA, which entitles the state to federal funding that is used to try to protect the public. 42 U.S.C. § 16925(a).

Admit. The answer to ¶ 35 is incorporated by reference. The federal government has certified Michigan as having substantially implemented SORNA, and Michigan receives Byrne grant funds even though it diverges from SORNA in significant ways. Michigan Substantial Implementation Review, at 2, Ex. 150.

75. Retroactivity is one factor in determining substantial implementation of federal SORNA. 29 C.F.R. § 72.3.

Admit that retroactivity is one of many factors that the federal government *considers* in deciding whether a jurisdiction has "substantially implemented" SORNA. Deny to the extent this statement suggests retroactivity *determines* whether a jurisdiction is deemed "substantially compliant," or suggests that a state with non-retroactive registration provisions will be denied funding. The federal government considers "on a case-by-case basis whether jurisdictions' rules or procedures that do not exactly follow the provisions of SORNA or these Guidelines 'substantially' implement SORNA." National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030, 38048 (July 2, 2008). Even among the 18 "substantially compliant" states that receive federal funding, at least 14 deviate from SORNA's retroactivity guidelines.[20]

SORNA also provides that the federal government must consider whether a jurisdiction is unable to substantially implement SORNA due to judicial rulings that the state's law is unconstitutional. 34 U.S.C. § 20927(b). The federal government has continued to find Michigan "substantially compliant" even after the *Does I* and *Does II* decisions barring SORA's retroactive application and

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[20] DOJ has determined that the following states "substantially implemented SORNA" despite deviating from retroactivity requirements: Alabama, Colorado, Delaware, Florida, Kansas, Louisiana, Nevada, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, and Wyoming. *See* Department of Justice Substantial Implementation Reviews, SMART, https://smart.ojp.gov/sorna/sorna-implementation-status. For details of how each state deviates from SORNA's retroactivity standards, scroll down to the implementation reviews.

even though SORA 2021 does not (as a result of those decisions) retroactively impose certain SORNA-congruent features (e.g., reporting of internet identifiers, M.C.L. § 28.727(1)(i)). Morris Dep., ECF No. 126-8, PageID.6034, at 129; SORNA Letters, Ex. 151. Similarly, Ohio is considered SORNA-compliant,[21] but many Ohioans are either not subject to registration or are subject to less extensive requirements than SORNA because the Ohio Supreme Court has ruled multiple aspects of Ohio's registry, including retroactive application, to be unconstitutional. *See*, *e.g.*, *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011).

76. The preceding paragraphs are incorporated by reference.

No response required.

77. Federal SORNA and Michigan SORA are identical in all material respects.

Deny. The response to ¶ 35 is incorporated by reference.

COUNT II – RETROACTIVE EXTENSION OF REGISTRATION TERMS

78. Previous amendments to SORA extended registration terms and conditions based on conviction. The new SORA kept in place the conviction-based registration requirements.

Admit.

79. Federal SORNA and Michigan SORA are identical in all material respects. (ECF No. 39-3, PageID.1240–1299; ECF No. 41-2, PageID.1386–1389.)

Deny. The response to ¶ 35 is incorporated by reference.

80. SORNA has the same goals of the new SORA of protecting the public and uses its purse strings to encourage compliance with federal standards. 42 U.S.C. § 16911(10).

[21] ***See* supra note 20.**

Admit in part and deny in part. With respect to SORA, the answer to ¶ 1 is incorporated by reference. With respect to SORNA, the declaration of purpose adopted in 2006—and not amended since—was: "to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this chapter establishes a comprehensive national system for the registration of those offenders." 34 U.S.C. § 20901. The statute then names 17 sexual assault victims and describes the offenses against them. Most were murdered. The language of the statute reflects the demonization of all people who commit sex offenses based on unrepresentative, horrible crimes. SORNA was justified as addressing "vicious attacks by violent predators," but requires registration based on a wide range of offenses irrespective of risk. Admit that SORNA uses the federal purse strings to encourage states to adopt SORNA-congruent registries.

81. Michigan substantially implements federal SORNA, which entitles the state to federal funding that is used to try to protect the public. 42 U.S.C. § 16925(a).

Admit. The answer to ¶ 74 is incorporated by reference.

82. Retroactivity is one factor in determining substantial implementation of federal SORNA. 29 C.F.R. § 72.3.

Admit. The response to ¶ 75 is incorporated by reference.

COUNT III – LACK OF INDIVIDUALIZED REVIEW

83. Michigan SORA and federal SORNA are conviction-based statutes that do not provide for individualized review for each registrant.

Admit. The response to ¶ 35 is incorporated by reference.

Plaintiffs also respond here to Defendants' statements regarding the alleged cost of individualized review raised in their response to Plaintiffs' Facts. Defs' Resp., ECF No. 129-2, PageID.7295. Defendants' cost estimates are based on comprehensive evaluations (up to 26 hours long) performed for civil commitment proceedings by psychologists charging $450/hour. Turner Decl., ECF No. 128-22, PageID.7091; Salter Decl., ECF No. 128-21, PageID.7067. But routine risk

assessments—including the thousands already done by the MDOC—are far less complicated and "much less expensive." Hanson Rebuttal, ECF No. 123-8, PageID.4199-4200; Kissinger Dep., ECF No. 126-5, PageID.5930, at 62-63 (Static-99R can be done in 15 minutes). Moreover, because the predictive accuracy of risk assessments is based on the methods used, not the credentials of evaluators, they can be and routinely are done by MDOC staff, and it is "unlikely that the extra cost [of hiring Ph.D.s] is worth it." Hanson Rebuttal, ECF No. 123-8, PageID.4200. In other words, the cost of each assessment is modest and the efficiency can be high. *Id.*, PageID.4199-4200; Hanson Dep., ECF No. 125-3, PageID.5071, at 211-12; Kissinger Dep., ECF No. 126-5, PageID.5928, at 53-54; PageID.5930, at 62-63. Doing additional empirically-based assessments (e.g., a STABLE in addition to a Static-99) improves accuracy, but not by much. Hanson Dep., ECF No. 125-3, PageID.5071, at 213. Clinically adjusting risk scores degrades predicative accuracy. *Id.*, PageID.5072-73, at 217-18.

Moreover, many registrants have already been assessed. The MDOC began using actuarial tools to assess registrants' needs/risks back in 2009, and has used the Static-99R since around 2011. Kissinger Dep., ECF No. 126-5, PageID.5922-23, at 29-35. Since 2015 *most registrants* (for whom the Static-99R is normed) have been scored upon arrival, and then again before release on parole. *Id*., at 25, 53, 69. The MDOC can combine the Static-99R with other tools (like the STABLE 2007), as well as clinical assessments, as appropriate. *Id.*, at 38-42. "Every adult male who engaged in sexually abusive behaviors that meets manual guidelines for scoring will have a Static and Stable prior to parole consideration." *Id.*, at 39. The cost is *already included* in MDOC's budget because this work is done primarily by trained staff, with some contract services. *Id.*, at 17, 44, 52-53, 55-56, 66. Registrants whose sentences did not include prison get Static-99R and Stable 2007 assessments done by contract vendors in the community. Spickler Dep., ECF No. 126-9, PageID.6071, at 11-16, 20.

84. Tier I offenders may petition for removal if they meet certain criteria. Mich. Comp. Laws § 28.728c(1).

Admit that after 10 years (from the later of conviction or release), Tier I registrants may petition if they meet certain criteria. M.C.L. §28.728c(1), (12).

85. Tier III offenders may petition for removal if they meet certain criteria. Mich. Comp. Laws § 28.728c(2).

Admit that Tier III registrants who were adjudicated in juvenile court can petition after 25 years (from the later of adjudication or release) if they meet certain criteria. Deny that Tier III registrants who were convicted as adults (including children convicted as adults) can petition for removal. M.C.L. §28.728c(2), (13).

86. Tier I, II, or III offenders may petition for removal if they meet certain criteria. Mich. Comp. Laws § 28.728c(3).

Deny as misleading. M.C.L. § 28.728c(3) does not allow registrants to petition for removal based on a claim that they are rehabilitated and registration is no longer warranted. Rather, that section provides an error-correction mechanism for people who were mistakenly retained on the registry after their offense became non-registrable. Specifically, certain offenses that were previously registrable (e.g. "Romeo and Juliet" offenses, juvenile adjudications for children under 14) no longer require registration. M.C.L. §§ 28.722(a)(iii), (t)(v), (t)(vi), (t)(x), (v)(iv). Because people with such offenses are not subject to registration, courts "shall" grant petitions under M.C.L. §§ 28.728c(3), (14) & (15).

COUNT IV – UNEQUAL OPPORTUNITY TO PETITION FOR REMOVAL

87. Tier I offenders may petition for removal if they meet certain criteria. Mich. Comp. Laws § 28.728c(1).

Admit. The response to ¶ 84 is incorporated by reference.

88. Tier III offenders may petition for removal if they meet certain criteria. Mich. Comp. Laws § 28.728c(2).

Admit. The response to ¶ 85 is incorporated by reference.

89. Tier I, II, or III offenders may petition for removal if they meet certain criteria. Mich. Comp. Laws § 28.728c(3).

Deny. The response to ¶ 86 is incorporated by reference.

90. As of January 2023, there were 3,191 Tier I registrants that were eligible to

petition for relief. (Ex. C, Second Affidavit of Sharon Jegla, ¶4; ECF No. 123-6, PageID.3961.)

Deny. While there were 3,191 Tier I registrants in January 2023, it is unknown how many have met the ten-year waiting period and the other eligibility criteria for petitioning. Data Rept., ECF No. 123-6, PageID.3952, ¶¶ 5, 135-36. Many may never become eligible if they fail to meet all the listed criteria.

91. In addition, according to Plaintiffs' report, there were over 2,037 people on the registry for a juvenile offense, which [sic] are eligible to petition for removal. (ECF No. 123-6, PageID.3954.)

Deny. While there were 2,037 juvenile registrants in January 2023, it is unknown how many have met the 25-year waiting period and the other eligibility criteria for petitioning. Data Rept., ECF No. 123-6, PageID.3954, ¶¶ 18, 135-36. Many may never become eligible if they fail to meet all the listed criteria.

92. In total, in January 2023 there were 5,228 registrants that were eligible to petition for removal from the registry, which translates to nearly 12% of the registrants. ((3,191 + 2,037 = 5,228) / 44,000) = 12%

Deny. The answers to ¶¶ 90 and 91 are incorporated by reference.

COUNT V – MANDATORY REPORTING AND COMPELLED SPEECH

93. The SORA, like its federal counterpart the SORNA, requires registration, periodic verification (based on the crime of conviction) and updating of information. (ECF No. 39-3, PageID.1240–1299.)

Admit as to SORA. As to SORNA, see answer to ¶35, incorporated by reference. Admit SORNA seeks to incentivize states to adopt registries with these features.

Initial Registration

94. Initial Registration requires offenders to provide various information to the Notifying Official, including, but not limited to: names, social security number(s), date(s) of birth, address, employers address, name and address of school, telephone numbers, email and internet identifiers (for certain offenders), vehicle information, etc. Mich. Comp. Laws § 28.727(1)–(2); 34 U.S.C. § 20914. (ECF No. 126-7, Page ID.6204–6208.)

Admit that M.C.L. § 28.727 requires registrants to provide the listed information at initial registration. Deny to the extent this statement suggests that this requirement is limited to initial registration, that M.C.L. § 28.727 uses the term "Notifying Official," or that 34 U.S.C. § 20914 imposes this requirement (see answer to ¶ 35, incorporated by reference).

95. The statute requires the officer, court, or employee of the agency that registers the individual, to sign the Registration form and is identified as the "Notifying Official." Mich. Comp. Laws § 28.727(5). (ECF No. 126-7, PageID.6208.) Under federal law the officer must inform the offender of their duties. 34 U.S.C. § 20919(a)(1).

Admit that M.C.L. § 28.727(5) requires the officer, court, or registering agency employee to sign the registration form. Deny that M.C.L. § 28.727(5) identifies those persons as "notifying officials." Admit that the Registration Form, ECF No. 126-17, PageID.6208, has signature lines for a "Notifying Official." Deny that federal law requires this for the reasons set out in response to ¶ 35, incorporated by reference.

96. The offender must also sign the Registration form, which includes an attestation that the information provided at registration is accurate and complete. Mich. Comp. Laws § 28.727(4). (ECF No. 126-7, PageID.6208.)

Admit.

97. The form notifies the offender that willfully failing to comply or knowingly providing false information is a crime and may result in prosecution. (ECF No. 126-7, PageID.6208.)

Admit.

98. The form also includes the following statement: "I have read the above requirement and/or had them read to me and I understand my registration duties." (ECF No. 126-7, PageID.6208.) Federal SORNA has essentially the same language and requirement. 34 U.S.C. § 20919(a)(2).

Admit that the form contains the statement cited (except that the plural "requirements" is used). Deny that federal law requires this for the reasons set out in response to ¶ 35, incorporated by reference.

Periodic Verification

99. Tier I offenders are required to appear in person to verify their address at a law enforcement agency once every year. Mich. Comp. Laws § 28.725a(3)(a); 34 U.S.C. § 20918(1).

Admit for SORA. For SORNA, the answer to ¶ 35 is incorporated by reference.

100. Tier II offenders are required to appear in person to verify their address at a law enforcement agency twice every year. Mich. Comp. Laws § 28.725a(3)(b); 34 U.S.C. § 20918(2).

Admit for SORA. For SORNA, the answer to ¶ 35 is incorporated by reference.

101. Tier III offenders are required to appear in person to verify their address at

a law enforcement agency four times every year. Mich. Comp. Laws § 28.725a(3)(c); 34 U.S.C. § 20918(3).

Admit for SORA. For SORNA, the answer to ¶ 35 is incorporated by reference.

102. At the time of verification, the law enforcement officer shall verify the individual's residence and any other information required to be reported and make any corrections, additions, or deletions that "the officer or authorized representative determines are necessary based on the review." Mich. Comp. Laws § 28.725a(5).

Admit.

103. This includes determining whether the individual's current photograph sufficiently matches the appearance of the individual. If not, the officer shall require the registrant to obtain a current photograph. Mich. Comp. Laws § 28.725a(5).

Admit. Further, the photograph must be obtained within seven days. *Id.*

104. The reviewing officer shall sign and date a verification receipt and give a copy to the registrant. Mich. Comp. Laws § 28.725a(5).

Admit.

105. Registrants must keep their information current, and if it changes, they must inform law enforcement. Mich. Comp. Laws § 28.725; 34 U.S.C. § 20914(c).

Admit that SORA requires registrants to report changes within three business days. With respect to SORNA, the answer to ¶ 35 is incorporated by reference.

106. Some changes must be made in person: home addresses; employment; school information; and name changes. Mich. Comp. Laws § 28.725. (ECF No.

126-17, PageID.6207.)

Admit that some changes must be reported in person either because SORA requires it or MSP decided to impose in-person reporting. Pls' Facts, ECF No. 123-1, PageID.3785-88, ¶¶ 266-275. Deny to the extent Defendants suggest that only the listed changes must be reported in person. Additional changes (e.g., volunteering, international travel) also must be reported in-person either because the statute or the MSP require it. Pls' Facts, ECF No. 123-1, PageID.3785.

107. Other information, which is more likely to change frequently, may be made via mail: temporary addresses and dates of travel if intending to be away from residence for more than seven days; email addresses and internet identifiers (only for those with offenses after July 1, 2011); vehicle information; and telephone numbers. (ECF No. 126-17, PageID.6207, 6210–6212.)

Admit that some information, including email addresses, internet identifiers, vehicles, and phone numbers can be reported by mail, as can *domestic* travel. International travel of more than seven days and student travel requires in-person reporting. M.C.L. §§ 28.725(8), 28.724a(1)(b). Deny that information reportable by mail is more likely to change frequently. There is no evidence in the record about how frequently in-person reportable information (work, volunteering, housing, etc.) changes compared to information reportable by mail.

COUNT VI – VIOLATION OF PLEA AGREEMENTS

108. Previous amendments to SORA extended registration terms and conditions based on conviction. The new SORA kept in place the conviction-based registration requirements.

Admit that prior SORA amendments retroactively extended registration terms for thousands of people based solely on convictions with no individual review. Admit that SORA 2021 keeps those retroactively-lengthened registration terms.

109. Federal SORNA and Michigan SORA are identical in all material respects.

(ECF No. 39-3, PageID.1240–1299; ECF No. 41-2, PageID.1386–1389.)

Deny. The response to ¶ 35 is incorporated by reference.

110. SORA is intended to protect children and others from the commission of potential future offenses by registrants. Mich. Comp. Laws § 28.721a.

Admit in part and deny in part. The response to ¶1 is incorporated by reference.

111. The costs of rape have a high societal cost of $100,000–$300,000 per victim. (ECF No. 128-19, PageID.6994.)

Admit in part and deny in part. The responses to ¶¶ 9 and 72 are incorporated by reference.

112. The majority of victims of sexual assault are children. Where the victim age is known: 16,793 are under the age of thirteen, 14,745 are between the ages of thirteen and seventeen; and 4,657 are adult victims. (Ex. K, Jegla Affidavit.)

Unable to admit or deny. The response to ¶ 4 is incorporated by reference.

113. The registry encourages victims to come forward. (Ex. A, Dare Affidavit, ¶14.)

Deny. The answers to ¶¶ 70 and 71 are incorporated by reference.

114. The registry is important for victims and encourages reporting. (Ex. B, Bennetts Declaration, ¶18.)

Deny. The responses to ¶¶ 70-71 are incorporated by reference.

115. SORNA has the same goals of the new SORA of protecting the public and uses its purse strings to encourage compliance with federal standards. 42 U.S.C. §

16911(10).

Admit in part and deny in part. The response to ¶ 80 is incorporated by reference.

116. Michigan substantially implements federal SORNA, which entitles the state to federal funding that is used to try to protect the public. 42 U.S.C. § 16925(a).

Admit. The response to ¶ 74 is incorporated by reference.

117. Retroactivity is one factor in determining substantial implementation of federal SORNA. 29 C.F.R. § 72.3.

Admit. The response to ¶ 75 is incorporated by reference.

118. SORA registration obligations are collateral to a guilty plea.

Deny. This is not a factual statement, but an incorrect assertion of law.

COUNT VII – REGISTRATION FOR NON-SEX OFFENSE

119. SORA requires registration of individuals that are convicted of kidnapping, child enticement, or unlawful imprisonment, regardless of whether there is a sexual component to the crime. Mich. Comp. Laws § 28.722(r)(iii), (r)(x), (v)(ii), v(iii), (v)(vii).

Admit.

120. SORNA has parallel provisions. 34 U.S.C. § 20911(3)(A)(ii); and (4)(B).

The response to ¶ 35 is incorporated by reference. Admit that SORNA seeks to incentivize states to require registration of non-sex offenders.

121. The Michigan Court of Appeals, in a published opinion, found that requiring Sex Offender registration for kidnapping is cruel or unusual punishment under the

Michigan Constitution, if there was no sexual component to the crime. *People v. Lymon*, 993 N.W.2d 24, 46 (Mich. 2022).

Admit that *Lymon* held that sex offender registration for a non-sexual offense is cruel or unusual punishment. Deny that *Lymon* involved kidnapping—the crime was unlawful imprisonment—or that Defendants' interpretation of the opinion is completely correct. Plaintiffs read *Lymon* to bar registration for non-sexual offenses. *Lymon* does not allow prosecutors to unilaterally decide that a person should register, as Defendants believe. Nor does it permit registration where there is no sexual element to the offense, even if there are factual allegations that the crime had a sexual component. The opinion speaks for itself.

122. As a result of the *Lymon* opinion, the Michigan State Police determined that there were 295 registrants on the registry with convictions for kidnapping, child enticement or unlawful imprisonment. (Ex. O, Seldon Declaration, ¶ 9.)

Admit that at least 295 registrants with convictions for kidnapping, child enticement, unlawful imprisonment, or comparable out-of-state offenses were subject to SORA as of Jan. 2023. Data Rept., ECF No.123-6, PageID.3989, ¶ 143 (about 298 in non-sex offense subclass). Deny that MSP made this determination. Selden draws that number from Plaintiffs' data report. Selden Decl., ECF No. 129-18, PageID.7754, ¶ 9. At the same time, Selden says that MSP identified *326 registrants just with Michigan non-sex offense convictions* (not including people with out-of-state non-sex offenses): 14 who were required to register based on a unilateral prosecutorial decision, 152 who were temporarily removed, and 160 who had both non-sex offense and sex offense convictions. *Id.* MSP did not identify people with *out-of-state* convictions for non-sex offenses. *Id.*

123. The MSP notified the convicting courts, law enforcement agencies, prosecutors, the effected registrants, and the Prosecuting Attorneys Association of Michigan that effected registrants would be removed from the registry unless the prosecutor provided information indicating that there was a sexual component to the crime. (ECF No. 128-7, PageID.6656; ECF No. 128-8, PageID.6658; ECF No. 128-

9, PageID.6660; ECF No. 128-10, PageID.6662.)

Admit that MSP followed this procedure for about 170 people. Deny that MSP did so for the remaining members of the subclass. MSP did not follow this procedure for people with non-Michigan convictions. Data Rept., ECF No. 123-6, PageID.3989, ¶ 143 (subclass is around 298 people, including about 22 with out-of-state convictions); Elbakr Decl., ECF No. 123-27, PageID.4804-05, ¶¶ 5, 7-8, 11 (MSP spreadsheet shows process used for about 170 people, but not for out-of-staters); Morris Dep., ECF No. 126-8, PageID.6041, at 159-60; Beatty Dep., ECF NO. 126-1, PageID.5768-5769. Nor did MSP seek to determine for the approximately 160 people who have a listed Michigan non-sex offense *and* a sex offense whether eliminating registration based on the non-sex offense would affect their registration requirements. (For example, a person with a 1990 Tier I sex offense and 1995 kidnapping would come off the registry if the kidnapping case is non-registrable.) Selden Decl., ECF No. 128-24, PageID.7754, ¶ 9.

124. The MSP removed all registrants from the registry with only a conviction for kidnapping, child enticement or unlawful imprisonment, except for 14 registrants where the prosecutor determined that there was a sexual component to the crime. (Ex. P, Correspondence from Prosecutors; Ex. O, Seldon Declaration, ¶ 9.)

Admit that 14 registrants whose only registrable conviction is a *Michigan* conviction for kidnapping, child enticement or unlawful imprisonment remain on the registry based on a prosecutor's unilateral determination that the offense had a sexual component. Elbakr Decl., ECF No. 123-27, PageID.4805-06, ¶¶ 8, 12. Those 14 registrants received no notice, opportunity to contest the determination, or judicial review. Lymon Procedure, ECF No. 128-11 (giving notice only to those removed); Registrant Letter, ECF No. 128-10, PageID.6662 (same).

Admit that MSP *temporarily* removed about 153 registrants with *Michigan* non-sex offense convictions while awaiting a Michigan Supreme Court decision in *Lymon*. Elbakr Decl., ECF No. 123-27, PageID.4805-06, ¶¶ 8, 12 (136 removed where no response from prosecutor; 17 removed based on prosecutor response). MSP told the removed registrants that "[t]his is not a determination that you no longer need to register," and that prosecutors or police could still tell them to register. *Lymon* Registrant Letter, ECF No. 128-10, PageID.6662. Removed registrants still face prosecution under SORA if a prosecutor decides SORA

applies. Beatty Dep., ECF No. 126-1, PageID.5768, 5770-5771. MSP will also put these people back on the registry if, at any time, the prosecutor says the person should register, or if the Michigan Supreme Court reverses in *Lymon*. Defs' Resp. to Pls' Facts, ECF No. 129-2, PageID.7484, ¶¶ 463-464.

Deny that the MSP removed *all* but 14 registrants with only convictions for kidnapping, child enticement or unlawful imprisonment. MSP did not identify or remove registrants with *out-of-state* convictions for such offenses. Morris Dep., ECF No. 126-8, PageID.6042 at 162-163; Elbakr Decl., ECF No. 123-27, PageID. 4804-05, ¶ 7. MSP also didn't identify everyone whose only registrable conviction was a Michigan non-sex offense. For example, MSP failed to identify Doe A and apparently didn't contact the prosecutor in his jurisdiction about whether he should be removed.[22] Elbakr Decl., ECF No. 123-27, PageID.4806, ¶ 13.

125. There are some registrants that remain on the registry with a conviction for kidnapping, child enticement or unlawful imprisonment, plus a conviction for criminal sexual conduct. (Ex. O, Seldon Declaration, ¶9.)

Admit. The answer to ¶ 123 is incorporated by reference.

COUNT VIII – VAGUENESS

126. SORA requires reporting all telephone numbers registered to or used by the individual. Mich. Comp. Laws § 28.727(1)(h).

Admit.

127. SORNA requires reporting information relating to remote communication identifiers, all designations the sex offender uses for purposes of routing or self-

[22] Doe A is not on the online registry, apparently because MSP has not republished his information after removing him from the website under the *Does I* judgment. *Does I* Final Judgment, ECF No. 128-16, ¶¶ 5.a & 7, PageID.6966-67 (providing that Doe #1—Doe A here—is only to be on the non-public registry, unless or until the law changes).

identification in internet, or telephonic communications or postings, including email addresses and telephone numbers. 28 C.F.R. § 72.7(e); 72.6(b).

Admit to the extent this paragraph suggests that SORNA seeks to incentivize states to adopt registries that require reporting of the information listed above. Deny to the extent this paragraph suggests that SORNA requires Michigan registrants to report the information listed above unless there is *both* (1) a predicate for federal jurisdiction, *and* (2) a state registration system where such information is reportable. As explained in response to ¶ 35, incorporated by reference, SORNA does not impose obligations absent a predicate for federal jurisdiction and does not operate independently of state registries. Registrants have no way to report information under SORNA if not required under state law.

128. SORA requires reporting of email addresses and internet identifiers registered to or used by the registrant. Mich. Comp. Laws § 28.727(1)(i) (this only applies to individuals with offenses committed on or after July 1, 2011).

Admit SORA requires such reporting. It is unclear whether the requirement is triggered by offense commission date or registration date. ("This subdivision applies only to an individual required to be registered under this act after July 1, 2011." M.C.L. § 28.727(1)(i).)

129. SORNA requires reporting information relating to remote communication identifiers, all designations the sex offender uses for purposes of routing or self-identification in internet, or telephonic communications or postings, including email addresses and telephone numbers. 28 C.F.R. § 72.7(e); 72.6(b).

Admit in part and deny in part for the reasons set forth in the answers to ¶¶ 35 and 127, incorporated by reference.

130. SORA requires reporting of the license plate number and description of any vehicle owned or operated by the registrant. Mich. Comp. Laws § 28.727(1)(j).

Admit.

131. SORNA requires reporting the license plate number and a description of any vehicle owned or operated by the sex offender. 34 U.S.C. § 20914(a)(6).

Admit in part and deny in part for the reasons set forth in the answers to ¶¶ 35 and 127, incorporated by reference.

132. SORA requires reporting of name and any nicknames, aliases, tribal names, ethnic names, and any other name by which a registrant has been known. Mich. Comp. Laws § 28.727(1)(a).

Admit.

133. SORNA requires reporting of the name of the sex offender (including any alias used by the individual). 34 U.S.C. § 20914(a)(1).

Admit in part and deny in part for the reasons set forth in the answer to ¶¶ 35 and 127, incorporated by reference.

134. SORA requires reporting of the address where the registrant resides, or if they do not have a residence, the location or area used in lieu of a residence, or if the individual is homeless, the village, city, or township where the person will spend the majority of their time. Mich. Comp. Laws § 28.727(1)(d).

Admit.

135. SORNA requires reporting the address of each residence at which the offender resides. 34 U.S.C. § 20914(a)(3). If they have no expected residence address, other information describing where they will reside with whatever definiteness is possible under the circumstances.

Admit in part and deny in part for the reasons set forth in the answer to ¶¶ 35

and 127, incorporated by reference. Deny that 34 U.S.C. § 20914(a)(3) contains any language about reporting where there is no expected residence address.

136. SORA requires reporting of physical descriptions, which means race, sex, hair, eye color, height, and weight. Mich. Comp. Laws § 28.727(1)(o). (ECF No. 126-17, PageID.6204.)

Admit that SORA requires "a complete physical description of the individual." M.C.L. § 28.727(1)(o). Admit that MSP's Registration Form requires registrants to report race, sex, hair, eye color, height, and weight. ECF No. 126-17, PageID.6204. Registrants must also report scars, marks, and tattoos. *Id.*, PageID.6205. In addition, the form asks whether fingerprints, palm prints, and DNA are on file. *Id.*, PageID.6204; *see also* M.C.L. § 28.727(1)(q). Deny that SORA defines "physical description" to mean "race, sex, hair, eye color, height and weight," as SORA does not define the term "physical description."

137. SORNA requires a physical description of the sex offender. 34 U.S.C. § 20914(b)(1).

Admit in part and deny in part for the reasons set forth in the answer to ¶¶ 35 and 127, incorporated by reference.

138. SORA requires reporting of the name and address of each employer. If the location is not fixed, the registrant must provide general areas where they work and normal travel routes taken while working. Mich. Comp. Laws § 28.727(1)(f).

Admit. SORA has additional employment reporting requirements beyond those listed (e.g., contract employment, reporting locations different from employer address, etc.). M.C.L. §§ 28.722(d), 28.725(1)(b), 28.727(1)(f); Obligations Summary, ECF No. 123-3, PageID.3915-16, ¶ 4. MSP interprets SORA's employment reporting requirement to include volunteering. Registration Form, ECF No. 126-17, PageID.6205, § VII, and PageID.6207, ¶ 6.b.

139. SORNA requires reporting the name and address of any place where they are an employee or will be an employee. 34 U.S.C. § 20914(a)(4). If the offender

is employed but with no fixed place of employment, other information describing where the offender works with whatever definiteness is possible under the circumstances. 28 C.F.R. § 72.6(c)(3).

Admit in part and deny in part for the reasons set forth in the answer to ¶¶ 35 and 127, incorporated by reference.

140. SORA requires reporting of name and address of any school attended by the registrant or that has accepted registrant. School means a public or private post-secondary school or school of higher education, including a trade school. Mich. Comp. Laws § 28.727(1)(g).

Admit. SORA has additional education reporting requirements beyond those listed above (e.g., reporting schools one "plans to attend," disenrollment, student movement). M.C.L. §§ 28.722(h), 28.724a, 28.725(1)(c), 28.727(1)(g); Obligations Summary, ECF No. 123-3, PageID.3917-18, ¶ 7.

141. SORNA requires reporting where the offender is a student or will be a student. 34 U.S.C. § 20914(a)(5).

Admit in part and deny in part for the reasons set out in response to ¶¶ 35 and 127, incorporated by reference.

COUNT IX – COMPELLED ADMISSION

142. Initial Registration requires offenders to provide various information to the Notifying Official, including, but not limited to: names, social security number(s), date(s) of birth, address, employer's address, name and address of school, telephone numbers, email and internet identifiers (for certain offenders), vehicle information, etc. Mich. Comp. Laws § 28.727(1)–(2); 34 U.S.C. § 20914. (ECF No. 126-7,

PageID.6204–6208.)

Admit in part and deny in part for the reasons set out in response to ¶ 94, incorporated by reference.

143. The statute requires the officer, court, or employee of the agency that registers the individual, to sign the Registration form and is identified as the "Notifying Official." Mich. Comp. Laws 28.727(5). (ECF No. 126-7, PageID.6208.) Under federal law the officer must inform the offender of their duties. 34 U.S.C. § 20919(a)(1).

Admit in part and deny in party for the reasons set out in response to ¶ 95, incorporated by reference.

144. The offender must also sign the Registration form, which includes an attestation that the information provided at registration is accurate and complete. Mich. Comp. Laws § 28.727(4). (ECF No. 126-7, PageID.6208.)

Admit.

145. The form notifies the offender that willfully failing to comply or knowingly providing false information is a crime and may result in prosecution. (ECF No. 126-7, PageID.6208.)

Admit.

146. The form also includes the following statement: "I have read the above requirement and/or had them read to me and I understand my registration duties." (ECF No. 126-7, PageID.6208.) Federal SORNA has essentially the same language

and requirement. 34 U.S.C. § 20919(a)(2).

Admit in part and deny in part for the reasons set out in response to ¶ 98, incorporated by reference.

COUNT X – Reporting Requirements Restricting Speech and Association

147. There is nothing in the SORA that prohibits registrants from accessing the internet or obtaining an email address or internet identifier. The requirement under state law is only to report the information.

Admit that registrants are legally permitted to access the internet and obtain an email address or internet identifier provided they register that information with the government. Deny that "nothing in SORA" affects registrants' internet access. Registrants are barred from major social media platforms. *See*, *e.g.*, Prescott Report, ECF No. 123-10, PageID.4303; Facebook Help Center, https://www.facebook.com/help/210081519032737. Only 60% of registrants report an email address, and 76% do not have non-email internet *identifiers*. Data Rept., ECF No. 123-6, PageID.3955, ¶¶ 22, 117–18. This reflects the burden of reporting changes within three days, fear of harassment and being outed as registrants, confusion about reporting requirements, and inability to access social media. Pls' Facts, ECF No. 123-1, PageID.3784, ¶¶ 262-63, 325-26, 515-33.

148. Registrants' email addresses and internet identifiers are for law enforcement only and are not posted on the public website. Publicly posting email and internet identifiers is prohibited by federal law. 28 U.S.C. § 20916(c) and 20920(b)(4); 76 F.R. No.§ 1630, 1637; 86 F.R. No.§ 69856, 69858.

Admit that registrants' email addresses and internet IDs are not posted on the online registry as of Dec. 28, 2023. Deny in all other respects. Under SORA 2011, emails and internet IDs could not be posted on the online registry. M.C.L. § 28.728(3)(e) (2020). That provision was stricken in SORA 2021, which now permits email and internet identifiers to be posted online. Senate Substitute for H.B. 5679, 100th Leg., Reg. Sess. (Mich. 2020) (striking §8(3)(e)); *Lymon*, 993 N.W.2d at 39 ("under the 2021 SORA, the scope of Internet-based information

that a registrant must report is not only broader, but it is also permissible to make such information available on the public website"). Nor does federal law bar posting identifiers. As explained in the answer to ¶ 35, incorporated by reference, SORNA does not bind states, but rather seeks to incentivize them to adopt SORNA-congruent registries. A large majority of states have rejected SORNA, and even those states that "substantially implement" SORNA deviate in significant ways. Thus, SORNA does not prevent Michigan from posting emails or internet identifiers. Moreover, there is no evidence that a decision to do so would jeopardize Michigan's "substantially compliant" status.

149. SORNA requires the reporting of remote communication identifiers, which is all designations used for routing of self-identification, including email addresses. 28 C.F.R. § 72.7(e); 72.6(b).

Admit in part and deny in part for the reasons set out in response to ¶¶ 35 and 127, incorporated by reference.

150. The words "dangerous sex offender" do not appear on the public sex offender registry.

Admit those exact words do not appear. But that is precisely the message the online registry conveys: its "design, language, and functionality … represent each person listed as a current danger." Lageson Rept., ECF No. 123-14, PageID.4484, ¶ 13; Registry Screenshots, ECF No. 127-24, PageID.6602.

COUNT XI – REGISTRATION FOR NON-MICHIGAN CONVICTIONS

151. Individuals that move to Michigan with convictions from other states must register in Michigan. Mich. Comp. Laws § 28.722, 723, 724.

Deny. Not every non-Michigan conviction results in registration. Admit that SORA requires people with convictions from other states to register in Michigan if (a) the offense is "substantially similar" to a registrable Michigan offense, M.C.L. §§ 28.722(r)(x), (t)(xiii), (v)(viii); or (b) the "individual from another state [] is required to register or otherwise be identified as a sex or child offender or predator under a comparable statute of that state." M.C.L. § 28.723(1)(d).

152. The MSP determines the registration requirements of the registrants based on the application of Michigan law to their offense.

Neither admit nor deny. Plaintiffs do not understand this statement. MSP determines registration requirements for people with non-Michigan convictions using the process set out in Pls' Facts, ECF No. 123-1, PageID.3874-88.

153. Under the statute, a hearing in [sic "is"] not provided prior to an individual being informed of their registration obligations.

Admit that SORA does not provide for a hearing prior to MSP deciding whether and at what tier level a person with a non-Michigan conviction must register. Deny to the extent this paragraph suggests that MSP sends registrants notice of MSP's decision. No notice of the decision, or the reason therefore, is provided. The only information people receive is a notation of their tier level on the Registration Form. *Id.*, ECF No. 123-1, PageID.3884-88, §§ XIV(D)-(E).

154. Individuals have the opportunity to challenge the registration determinations and have done so in the past. (ECF No. 126-1, PageID.5765–5767.)

Deny. Defendants appear to be describing people with non-Michigan convictions. In the cited deposition of MSP's legal advisor, he pointed to M.C.L. § 28.728c, which is the section of SORA that provides that some Tier I registrants and juveniles can petition for discretionary removal, but that all other registrants cannot. That section "is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act." M.C.L. § 28.728c(4). The legal advisor conceded that "there's nothing in the statute that provides for review" of registration decisions for people with non-Michigan convictions. Beatty Dep., ECF No. 126-1, PageID.5766, at 232. The only "opportunity to challenge" is by informally raising the issue with MSP (which then decides whether its own decision is correct) or by suing. *Id.*, at 226-234.

155. Registrants under SORA seemingly have processes by which they can challenge their registration requirements. *See* Mich. Const. of 1963, art. VI, § 28 ("All final decisions, findings, rulings and orders of any administrative officer or

agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law."); Mich. Comp. Laws § 600.4401 (providing for an action for mandamus against a state officer).

Admit that registrants can file lawsuits to challenge their registration requirements, which is what they have done here.

Respectfully submitted,

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Dated: December 28, 2023

LOCAL RULE CERTIFICATION

I, Miriam Aukerman, certify that this document conforms to the page limits set forth in the Court's Order Setting Schedule for Summary Judgment Motions, ECF No.121, and complies with terms set under the Local Rules. The Court's order sets a 35-page limit. In order to facilitate the Court's review of the factual issues, Plaintiffs adopt the same approach used by Defendants in their fact responses, which is to first set out each of the facts in the opposing party's statement, followed by the answer. This response is less than 35 pages longer than Defendants' fact statement.

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