

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SANDER SABA,

*Plaintiff,*

-against-

ANDREW M. CUOMO, in his official  
capacity as Governor of the State of New  
York, et al.,

*Defendants.*

No. 20-cv-5859 (LJL)

**DECLARATION OF ATTORNEY CARL S. CHARLES IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

I, Carl S. Charles, hereby declare as follows:

1. I am a Staff Attorney with Lambda Legal, and I represent Plaintiff Sander Saba ("Plaintiff" or "Mx. Saba") in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. The facts set forth herein are based on my personal knowledge. I am familiar with the facts and circumstances of this case and submit this declaration in support of Plaintiff Sander Saba's Opposition to Defendants' Motion to Dismiss.

3. As part of my representation of Mx. Saba, I have engaged in conversations with counsel for Defendants. These conversations have included calls and email communications that Defendant's counsel expressly required the parties' counsel to agree were subject to the protections of Federal Rule of Evidence ("FRE") 408.

4. On August 14, 2020, the parties met and had the first of several discussions about how the case might be resolved without the need for further litigation.

5. During the course of these conversations, Defendants' counsel represented that

the New York State Department of Motor Vehicles (“DMV”) planned to eventually make the State’s driver’s licenses available with “X” gender markers as part of system-wide overhaul of the DMV’s electronic database.

6. This was the first time the State made such a representation. In a phone call received by Plaintiff and myself, on June 7, 2020, DMV representative Brandon Flynn confirmed that the DMV was in the process of updating its computer system, but could not confirm whether the process would include an option for an “X” gender marker for New-York-issued licenses.

7. On August 14, Defendants’ counsel explained that this change would take, at a minimum, 18 months to effectuate, even though the State had already selected and engaged a vendor who would perform the system-wide overhaul.

8. At no point during this, or subsequent conversations, did Defendants’ counsel discuss or disclose that the anticipated completion date for the overhaul of the state DMV system would be December 2021.

9. To the contrary, on September 8, counsel for Defendants conveyed to Plaintiff’s counsel that the initial completion date for the overhaul of the New York State DMV system had been extended by an additional six months, or until mid-2022.

10. During these conversations, Defendants’ counsel also provided information about how the DMV systems functions with respect to the gender marker on New York State driver’s licenses.

11. Defendants’ counsel explained that in order to generate a motorist identification number (“MI number”) each driver must select a binary gender designation.

12. The MI number is communicated by the DMV to hundreds of state, federal, and private systems for purposes of identity verification, including car insurance companies, the

military selective service, and the Transportation Security Administration.

13. Counsel for Plaintiff and Defendants discussed possible settlement proposals, but the parties were unable to come to an agreement, and Plaintiff never accepted any offer.

Defendants' counsel never indicated that any of their proposals were exempt from the FRE 408 protection to which the parties had agreed.

14. Aside from the fact that the State's settlement proposals required Mx. Saba to still maintain a binary designation in the DMV's system that would be communicated to third parties, counsel for Defendants would not explicitly confirm that the DMV would change its underlying policy in a way that made even interim solutions available to all nonbinary people in New York.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed November 20, 2020.

New York, New York



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Carl S. Charles