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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JANE AND JOHN DOES 1 - 10, individually  
and on behalf of others similarly situated,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, a  
Washington public corporation; PERRY  
TAPPER, Public Records Compliance Officer  
at the University of Washington, in his official  
capacity; and DAVID DALEIDEN, an  
individual,

Defendants.

No. 2:16-cv-01212-JLR

**DEFENDANTS UNIVERSITY OF  
WASHINGTON AND PERRY TAPPER'S  
ANSWER TO PLAINTIFFS' THIRD  
AMENDED COMPLAINT**

Defendants UNIVERSITY OF WASHINGTON and PERRY TAPPER (collectively UW  
Defendants) by and through their attorneys of record ROBERT W. FERGUSON, Attorney  
General, and NANCY S. GARLAND, Assistant Attorney General, submit this Answer in response  
to Plaintiffs' Third Amended Complaint (Dkt. # 77).

>

**INTRODUCTORY PARAGRAPH**

The introductory paragraph of Plaintiffs’ Third Amended Complaint contains characterizations of Plaintiffs’ case to which no answer is required; however, to the extent an answer is deemed necessary, the UW Defendants deny the same, except as admitted in the responses to specific factual allegations below.

**I. PARTIES**

**Proposed Class Representatives**

1-9. The UW Defendants are without knowledge or information sufficient to form a belief as to the truth of the descriptions of John and Jane Does described in Paragraphs 1-9, and therefore deny.

10. The UW Defendants admit that Plaintiffs have filed this action as a class action, purportedly on behalf of all persons similarly situated.

**Defendants**

11. Deny. (The University of Washington is an agency of the State of Washington and an institution of higher education with its primary campus in Seattle, Washington.)

12. Admit.

13. The UW Defendants are without knowledge or information sufficient to form a belief as to the truth of the descriptions Defendant David Daleiden set forth in Paragraph 13, and therefore deny same.

14. The UW Defendants are without knowledge or information sufficient to form a belief as to the truth of the descriptions Defendant Zachary Freeman set forth in Paragraph 14, and

1 therefore deny same. (The UW Defendants note that Defendant Freeman was dismissed from this  
2 action on December 27, 2016. Dkt. # 105.)

3  
4 **II. JURISDICTION AND VENUE**

5 17.<sup>1</sup> The UW Defendants admit that Plaintiffs assert claims under the federal and  
6 Washington Constitutions and 42 U.S.C. § 1983.

7 18. Plaintiffs allegations of jurisdiction set forth in Paragraph 18 state legal conclusions to  
8 which no response is required. To the extent a response is required, UW Defendants admit the  
9 University of Washington stated no opposition to the jurisdiction of the Court for purposes of  
10 considering the issues of declaratory and/or injunctive relief, and deny the remaining allegations  
11 in paragraph 18 of the Third Amended Complaint.

12 19. Admit.

13  
14 **III. FACTS**

15 20. In response to Paragraph 20, UW Defendants admit that the Birth Defects Research  
16 Laboratory (BDRL) is a nationally recognized, National Institutes of Health (NIH)-funded lab for  
17 birth-defects research; a national resource for fetal tissue that collects, identifies and provides fetal  
18 tissue for research purposes solely to researchers at academic and non-profit research facilities  
19 around the country; and adheres to strict guidelines in receiving donated fetal tissue and providing  
20 the tissue for research in compliance with federal and state law and the terms of its NIH grant.

21 21. UW Defendants are without knowledge or information sufficient to form a belief  
22 as to the truth of the allegations set forth in Paragraph 21 and therefore deny the same.  
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26 <sup>1</sup>Paragraph numbers 15 and 16 were omitted from Plaintiffs' Third Amended Complaint.

1           22.     UW Defendants are without knowledge or information sufficient to form a belief  
2 as to the truth of the allegations set forth in Paragraph 22 and therefore deny the same.

3           23.     In response to Paragraph 23 UW Defendants admit only that on February 10, 2016,  
4 David Daleiden submitted a request under Washington’s Public Records Act to the University of  
5 Washington and admit that Exhibit A attached to the Third Amended Complaint is a copy of the  
6 request. UW Defendants deny the remainder of paragraph 23’s characterizations of that request,  
7 as the request speaks for itself.  
8

9           24.     In response to Paragraph 24, UW Defendants admit only that Zachary Freeman  
10 submitted a public records request to the UW, received by the University of Washington’s Office  
11 of Public Records and Open Public Meetings on February 12, 2016 and that Exhibit B attached to  
12 the Third Amended Complaint is a copy of the request. UW Defendants deny the remainder of  
13 paragraph 24’s characterization as the request speaks for itself.  
14

15           25.     In response to Paragraph 25, UW Defendants admit only that on or about July 21,  
16 2016, UW notified individuals identified in records responsive to David Daleiden’s request that  
17 Daleiden had submitted a public records request; and that Exhibit C to the Third Amended  
18 Complaint is a copy of the notice UW, except that it does not include a copy of David Daleiden’s  
19 request which was included with the notification. The UW Defendants are without knowledge or  
20 information sufficient to form a belief as to the truth of the remainder of the allegations in  
21 Paragraph 25. UW Defendants deny the Paragraph 25’s characterizations of the notice, as the  
22 notice speaks for itself.  
23

24           26.     In response to Paragraph 26, UW Defendants admit only that on or about July 26,  
25 2016, UW notified individuals identified in records responsive to Zachary Freeman’s request that  
26

1 Freeman had submitted a public records request; and that Exhibit D to the Third Amended  
2 Complaint is a copy of the notice UW sent, except that it does not include a copy of Zachary  
3 Freeman's request which was included with the notification. The UW Defendants are without  
4 knowledge or information sufficient to form a belief as to the truth of the remainder of the  
5 allegations in Paragraph 26. UW Defendants deny the Paragraph 26's characterizations of the  
6 notice, as the notice speaks for itself.  
7

8 27. In response to Paragraph 27, the UW Defendants admit that Perry Tapper is an  
9 individual in the Office of Public Records and Open Public Meetings who has been assigned to  
10 coordinate and review UW's response to the Daleiden and Freeman requests.  
11

12 28. In response to Paragraph 28, UW Defendants admit only that as of the date of filing  
13 of the Third Amended Complaint, the UW Defendants had not indicated an agreement to make  
14 certain redactions that had been proposed by Daleiden, Freeman, and/or their attorneys. UW  
15 Defendants are without knowledge or information sufficient to form a belief as to the truth of the  
16 remaining allegations set forth in Paragraph 28 and therefore deny the same.  
17

18 29. The UW Defendants are without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations set forth in Paragraph 29 and therefore deny the same.  
20

21 30. The UW Defendants are without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations set forth in Paragraph 30 and therefore deny the same.  
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24 31. The UW Defendants are without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations set forth in Paragraph 31 and therefore deny the same.  
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32. The UW Defendants are without knowledge or information sufficient to form a  
belief as to the truth of the allegations set forth in Paragraph 32 and therefore deny the same.

**IV. CLASS ACTION ALLEGATIONS**

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2 33. The UW Defendants take no position on the allegations set forth in Paragraph 33  
3 regarding the class definition. To the extent a position is required, the UW Defendants are without  
4 knowledge or information sufficient to form a belief as to the truth of the allegations set forth in  
5 Paragraph 33 and therefore deny the same.  
6

7 34. In response to Paragraph 34, The UW Defendants admit only that the University  
8 attempted to send notice to more than 150 individuals identified in records responsive to the  
9 records request. Portions of Paragraph 34 state legal conclusions or legal argument to which no  
10 response is required. To the extent a response is required, the UW Defendants are without  
11 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore  
12 deny the same.  
13

14 35. The UW Defendants take no position on the allegations set forth in Paragraph 35  
15 regarding commonality. Portions of Paragraph 35 state legal conclusions or legal argument to  
16 which no response is required. To the extent a response is required, the UW Defendants are without  
17 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore  
18 deny the same.  
19

20 36. The UW Defendants take no position on the allegations set forth in Paragraph 36  
21 regarding typicality. Portions of Paragraph 36 state legal conclusions or legal argument to which  
22 no response is required. To the extent a response is required, the UW Defendants are without  
23 knowledge or information sufficient to form a belief as to the truth of the allegations and therefore  
24 deny the same.  
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1 37. The UW Defendants take no position on the allegations set forth in Paragraph 37  
2 regarding adequacy. Portions of Paragraph 37 state legal conclusions or legal argument to which  
3 no response is required. To the extent a response is required, the UW Defendants are without  
4 knowledge or information sufficient to form a belief as to the truth of the allegations set forth in  
5 Paragraph 37 and therefore deny the same.  
6

7 38. The UW Defendants take no position on the allegations set forth in Paragraph 38  
8 regarding the appropriateness of injunctive and declaratory relief. Portions of Paragraph 38 state  
9 legal conclusions or legal argument to which no response is required. To the extent a response is  
10 required, the UW Defendants are without knowledge or information sufficient to form a belief as  
11 to the truth of the allegations set forth in Paragraph 38 and therefore deny the same.  
12

13 **FIRST CLAIM: DECLARATORY JUDGMENT**

14 39. The UW Defendants incorporate all admissions and denials made elsewhere in this  
15 answer as though fully set forth in this section.

16 40. The allegations in Paragraph 40 constitute legal conclusions or legal argument to  
17 which no response is required. To the extent a response is required, the UW Defendants deny the  
18 same.

19 41. In response to Paragraph 41 on page 8 of the Third Amended Complaint, the UW  
20 Defendants admit that under the Public Records Act, a court may enjoin release of a record or a  
21 portion of a record if certain conditions are met and that Doe Plaintiffs seek a declaratory judgment.  
22 The remainder of Paragraph 41 constitutes legal conclusions or legal argument to which no  
23 response is required. To the extent a response is required, the UW Defendants deny the same.  
24

25 >

**SECOND CLAIM: VIOLATION OF RIGHT TO PRIVACY UNDER  
FEDERAL AND STATE CONSTITUTIONS**

41.<sup>2</sup> The UW Defendants incorporate all admissions and denials made elsewhere in this answer as though fully set forth in this section.

42. The allegations in Paragraph 42 constitute legal conclusions or legal argument to which no response is required. To the extent a response is required, the UW Defendants deny the same.

43. The allegations in Paragraph 43 constitute legal conclusions or legal argument to which no response is required. To the extent a response is required, the UW Defendants deny the same.

**THIRD CLAIM: VIOLATION OF RIGHT TO ASSOCIATE UNDER  
FEDERAL AND STATE CONSTITUTIONS**

44. The UW Defendants incorporate all admissions and denials made elsewhere in this answer as though fully set forth in this section.

45. The allegations in Paragraph 45 constitute legal conclusions or legal argument to which no response is required. To the extent a response is required, the UW Defendants deny the same.

46. The allegations in Paragraph 46 constitute legal conclusions or legal argument to which no response is required. To the extent a response is required, the UW Defendants deny the same.

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<sup>2</sup> Paragraph no. 41 is repeated in the numbering sequence of Plaintiffs' Third Amended Complaint.  
DEFENDANTS UNIVERSITY OF WASHINGTON 8 ATTORNEY GENERAL OF WASHINGTON  
AND PERRY TAPPER'S ANSWER TO University of Washington Division  
PLAINTIFFS' THIRD AMENDED COMPLAINT 4333 Brooklyn Avenue NE, 18<sup>th</sup> Floor  
2:16-cv-01212-JLR UW Campus Box 359475  
Seattle, Washington 98195-9475  
Phone (206) 543-4150 Fax (206) 543-0779





**V. AFFIRMATIVE DEFENSES**

The UW Defendants incorporate their admissions, denials, and allegations above as though fully set forth herein. Without conceding which party bears the burden of proof and without admitting allegations previously denied, the UW Defendants assert the defense of qualified immunity.

**VI. RELIEF REQUESTED**

The UW Defendants respectfully requests the Court:

- A. Deny Plaintiffs’ request for reasonable attorneys’ fees and costs under 42 U.S.C. § 1998 insofar as they are requested from the University; and
- B. Any other relief the court finds just and equitable.

Respectfully submitted this 5th day of March, 2018.

ROBERT W. FERGUSON  
Washington Attorney General

/s/ Nancy S. Garland

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Perry Tapper

**CERTIFICATE OF SERVICE**

I certify, under penalty of perjury under the laws of the State of Washington, that I electronically filed the foregoing Defendants University of Washington and Perry Tapper's Answer to Plaintiffs' Third Amended Complaint with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record.

DATED this 5th day of March 2018.

/s/ Jeanie Hines  
Jeanie Hines, Legal Assistant

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