

Adam S. Sieff\*  
Farrah C. Vazquez\*  
DAVIS WRIGHT TREMAINE LLP  
350 South Grand Avenue, 27th Floor  
Los Angeles, California 90071-3487  
Tel: 213.663.6800  
adamsieff@dwt.com  
farrahvazquez@dwt.com

Ambika Kumar\*  
Nicole Saad Bembridge\*  
DAVIS WRIGHT TREMAINE LLP  
920 Fifth Avenue, Suite 3300  
Seattle, Washington 98104-1610  
Tel: 206.622.3150  
ambikakumar@dwt.com  
nicolesaadbembridge@dwt.com

*Attorneys for Plaintiff*  
MAYDAY HEALTH

Laura R. Handman\*\*  
Azeezat Adeleke\*\*  
DAVIS WRIGHT TREMAINE LLP  
1301 K Street NW, Suite 500 East  
Washington, D.C. 20005-3317  
Tel: 202.973.4200  
laurahandman@dwt.com  
azeezatadeleke@dwt.com

Wendy S. Heipt\*  
LEGAL VOICE  
907 Pine Street, No. 500  
Seattle, Washington 98101-1818  
Tel: 206.954.6798  
wheipt@legalvoice.org

Kelly O'Neill (Bar No. 9303)  
LEGAL VOICE  
P.O. Box 50201  
Boise, Idaho 83705  
Tel: 208.649.4942  
koneill@legalvoice.org

\*admitted *pro hac vice*

\*\**pro hac vice* forthcoming

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

**MAYDAY HEALTH,**

Plaintiff,

vs.

**RAÚL R. LABRADOR,** Attorney General of  
Idaho, in his official capacity,

Defendant.

Case No. **1:26-cv-00334-AKB**

**OPPOSITION TO MOTION TO STRIKE  
AND OBJECTION TO PLAINTIFF'S USE  
OF FEDERAL RULE OF EVIDENCE 408  
MATERIAL**

The Attorney General will not withdraw his threat to prosecute Mayday’s speech and does not want the Court to consider his latest refusal to disavow enforcement. But Mayday’s correspondence seeking a consent decree based on positions the Attorney General took in this litigation is not compromise evidence under Federal Rule of Evidence 408, nor does Mayday offer that correspondence for a purpose that rule disallows. The motion to strike must be denied.

**No compromise evidence.** Rule 408 applies only to offers of “valuable consideration in compromising or attempting to compromise” a disputed claim, or to conduct or statements made during such compromise negotiations. Fed. R. Evid. 408(a)(1)–(2). The correspondence in question is none of these things. Mayday’s counsel asked whether the Attorney General would agree to a consent decree. Counsel did not offer any valuable consideration—like dismissing the action—in exchange. *See, e.g., IBEW Loc. 48 v. Rosendin Elec., Inc.*, 2023 WL 3981282, at \*9 (D. Or. June 12, 2023) (admission during settlement negotiation was not subject to Rule 408 because it did “not reference valuable consideration”); *United States v. N.Y. City Transit Auth.*, 2010 WL 3855191, at \*18–19 (E.D.N.Y. Sept. 28, 2010) (same, because the attorney correspondence at issue sought relief for a client in exchange for nothing). Nor was the correspondence an attempt to compromise: Mayday demanded all of the injunctive relief it seeks on its First Amendment claim and conceded nothing—not declaratory relief, nor attorneys’ fees under 42 U.S.C. § 1988. *See, e.g., Rodriguez-Garcia v. Mun. of Caguas*, 495 F.3d 1, 12 (1st Cir. 2007) (plaintiff’s letter requesting “exactly what she wanted” was not compromise evidence subject to Rule 408 since there were no “mutual concessions”) (citation omitted), *aff’d*, 610 F.3d 756 (1st Cir. 2010); *Sandlin v. Shapiro & Fishman*, 919 F. Supp. 1564, 1569 (M.D. Fla. 1996) (letters offering no concessions were not compromise communications under analogue to Rule

408). Requests for “concessions” are “not compromises” subject to Rule 408. 23 Wright & Miller’s Federal Practice & Procedure, Evid. § 5309 (2d ed. 2026).

***The evidence is offered to show jurisdiction—not an impermissible purpose.*** Rule 408 also does not apply because Mayday offers the Attorney General’s refusal to withdraw his threat (PI Reply 4-5) to show a justiciable controversy, not “to prove or disprove the validity or amount of a disputed claim or to impeach” under Federal Rule of Evidence 408(a). The Ninth Circuit admitted exactly this kind of evidence over a Rule 408 objection in *Rhoades v. Avon Products, Inc.*, 504 F.3d 1151 (9th Cir. 2007). Like Mayday here, the plaintiff there presented a letter showing the defendant threatening litigation to establish an actionable case or controversy. *Id.* at 1155. And, like here, the defendant in *Rhoades* argued that the letter was compromise evidence “inadmissible for any purpose, including showing jurisdiction.” *Id.* at 1160. The court rejected that argument, holding the evidence was “perfectly acceptable under Rule 408” because it was offered “to satisfy the jurisdictional requirements of an action for declaratory relief,” rather than to prove the merits of the underlying trademark dispute. *Id.* at 1161–62 & 1161 n.9 (stressing that Rule 408(b)’s examples of permissible “other purpose[s]” were not exhaustive) (citation omitted). So too here. A rule holding otherwise would invite government officials to shield their threats from judicial review by couching every refusal to disavow as some form of settlement discussion.

The Attorney General’s argument that standing must be assessed at the moment Mayday filed this action (Mot. at 2) misses the point. Mayday had standing when it filed suit. *See* PI Mem. at 4–8, 11; Compl. ¶¶ 31–34. The Attorney General’s latest refusal to disclaim enforcement is simply *additional relevant evidence* confirming that standing persists. *See Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (an actual controversy must “persist throughout all stages of litigation”);

PI Reply at 1–8 (showing that it does here in part because of the Attorney General’s rejection of a consent decree disavowing enforcement).

The motion must be denied.

Dated: July 29, 2026

By: /s/ Adam S. Sieff  
Adam S. Sieff

Adam S. Sieff\*  
Farrah C. Vazquez\*  
DAVIS WRIGHT TREMAINE LLP  
350 South Grand Avenue, 27th Floor  
Los Angeles, California 90071-3487  
Tel: 213.663.6800  
adamsieff@dwt.com  
farrahvazquez@dwt.com

Ambika Kumar\*  
Nicole Saad Bembridge\*  
DAVIS WRIGHT TREMAINE LLP  
920 Fifth Avenue, Suite 3300  
Seattle, Washington 98104-1610  
Tel: 206.622.3150  
ambikakumar@dwt.com  
nicolesaadbembridge@dwt.com

*Attorneys for Plaintiff*  
MAYDAY HEALTH

Laura R. Handman\*\*  
Azeezat Adeleke\*\*  
DAVIS WRIGHT TREMAINE LLP  
1301 K Street NW, Suite 500 East  
Washington, D.C. 20005-3317  
Tel: 202.973.4200  
laurahandman@dwt.com  
azeezatadeleke@dwt.com

Wendy S. Heipt\*  
LEGAL VOICE  
907 Pine Street, No. 500  
Seattle, Washington 98101-1818  
Tel: 206.954.6798  
wheipt@legalvoice.org

Kelly O’Neill (Bar No. 9303)  
LEGAL VOICE  
P.O. Box 50201  
Boise, Idaho 83705  
Tel: 208.649.4942  
koneill@legalvoice.org

\*admitted *pro hac vice*

\*\**pro hac vice* forthcoming