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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

D.T., a minor, by and through his parent and next friend Lizette Trujillo; Jane Doe, a minor, by and through her parent and next friend Susan Doe; and Helen Roe, a minor, by and through her parent and next friend Megan Roe,

Plaintiffs,

v.

Dr. Cara M. Christ, in her official capacity as State Registrar of Vital Records and Director of the State of Arizona's Department of Health Services; Thomas Salow, in his official capacity as Branch Chief of the State of Arizona's Division of Public Health Licensing Services at the Department of Health Services; and Krystal Colburn, in her official capacity as Bureau Chief and Assistant State Registrar of the State of Arizona's Bureau of Vital Records,

Defendants.

Case No. 4:20-cv-00484-TUC-JAS

**STIPULATED PROTECTIVE  
ORDER**

1 **STIPULATED PROTECTIVE ORDER**

2 The Court recognizes that many of the documents and much of the information  
3 (“Materials” as defined herein) being sought through discovery or presented to the Court as  
4 exhibits to pleadings in the above-captioned action are sensitive in nature and, for statutory,  
5 regulatory, and privacy reasons, are normally kept confidential by the parties. The  
6 Materials to be exchanged throughout the course of the litigation between the parties may  
7 contain sensitive and confidential information that may subject parties to embarrassment,  
8 oppression and harassment, as is contemplated by Federal Rule of Civil Procedure  
9 26(c)(1)(G). The parties have agreed to be bound by the terms of this Protective Order  
10 (“Order”) in this action to facilitate the document production and disclosure, and protect the  
11 respective interests of the parties in their private and confidential information. This Order  
12 shall remain in effect unless modified pursuant to the terms contained in this Order.

13 IT IS THEREFORE ORDERED THAT,

14 The following Definitions shall apply in this Order:

15 A. The term “Confidential Information” will mean and include information  
16 contained or disclosed in any materials, including documents, portions of documents,  
17 answers to interrogatories, responses to requests for admissions, trial testimony, deposition  
18 testimony, and transcripts of trial testimony and depositions, including data, summaries,  
19 and compilations derived therefrom that is deemed to be Confidential Information by any  
20 party to which it belongs.

21 B. The term “Materials” will include, but is not limited to: documents;  
22 correspondence; memoranda; insurance information, email; clinician and/or patient  
23 information; materials that identify clinicians, and/or patients or potential patients; letters;  
24 statements; audio and/or video recordings; photographs; motion pictures; sketches;  
25 drawings; notes of discussions with third parties; other notes; business reports; instructions;  
26 disclosures; other writings; and internet archives.

27 C. The term “Party” will mean the persons and entities named as parties in this  
28 action: D.T., a minor, by and through his parent and next friend Lizette Trujillo; Jane Doe,

1 a minor, by and through her parent and next friend Susan Doe; and Helen Roe, a minor, by  
2 and through her parent and next friend Megan Roe; and Defendants Dr. Cara M. Christ, in  
3 her official capacity as State Registrar of Vital Records and Director of the State of  
4 Arizona’s Department of Health Services; Thomas Salow, in his official capacity as Branch  
5 Chief of the State of Arizona’s Division of Public Health Licensing Services at the  
6 Department of Health Services; and Krystal Colburn, in her official capacity as Bureau  
7 Chief and Assistant State Registrar of the State of Arizona’s Bureau of Vital Records.

8 D. The term “Producing Party” will mean any person or entity named as a party  
9 in this action or any non-party that produces or discloses any Materials in the course of this  
10 litigation.

11 E. The term “Receiving Party” will mean any person or entity named as a party  
12 in this action who receives any Materials produced or disclosed by a Producing Party in the  
13 course of this litigation.

14 F. The term “Counsel” will mean counsel of record and other attorneys,  
15 paralegals, secretaries, interns, externs, clerks, and other support staff employed by or  
16 volunteering for counsel of record. Counsel of record in this action are:

17 PATRICK GUNN  
18 pgunn@cooley.com  
19 BARRETT J. ANDERSON  
20 banderson@cooley.com  
21 COOLEY LLP  
22 101 California Street, 5th Floor  
23 San Francisco, California 94111-5800

24 MARY O’GRADY  
25 mogrady@omlaw.com  
26 COLIN PROKSEL  
27 cproksel@omlaw.com  
28 PAYSLIE BOWMAN  
pbowman@omlaw.com  
OSBORN MALEDON, P.A.  
2929 North Central Avenue, 21st Floor  
Phoenix, Arizona 85012-2793

1 ASAF ORR  
aorr@nclrights.org  
2 NATIONAL CENTER FOR LESBIAN RIGHTS  
870 Market Street, Suite 370  
3 San Francisco, California 94102  
*Attorneys for Plaintiffs*

4 AUBREY JOY CORCORAN  
aubreyjoy.corcoran@azag.gov  
5 PATRÍCIA C. LAMAGNA  
Patricia.lamagna@azag.gov  
6 ARIZONA ATTORNEY GENERAL'S OFFICE  
2005 N. Central Avenue  
7 Phoenix, AZ 85004

8 *Attorneys for Defendants*

9 As used in this Order, "Counsel" expressly includes Cooley LLP, Osborn Maledon, P.A.,  
10 the National Center for Lesbian Rights, Attorney General Mark Brnovich, the Office of the  
11 Attorney General, or any law firm appointed by the Office of the Attorney General to defend  
12 this action.

13 The following provisions shall apply in this litigation:

14 1. Each Party or non-party to this litigation that produces or discloses any  
15 Materials, answers to interrogatories, responses to requests for admission, trial testimony,  
16 deposition testimony, and transcripts of trial testimony and depositions, or information that  
17 the Producing Party believes should be subject to this Protective Order may designate the  
18 same as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER."

19 a. Designation as "CONFIDENTIAL – SUBJECT TO PROTECTIVE  
20 ORDER": Any Producing Party may designate Materials as  
21 "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" only if,  
22 in the good faith belief of such Party and its Counsel, or of such non-  
23 party, (1) the Materials contain personal, sensitive, confidential, or  
24 proprietary information, the unrestricted disclosure of which could be  
25 harmful to the operations, or other protectable interests of such Party  
26 or non-party, or another party to whom a Producing Party reasonably  
27 believes it owes an obligation of confidentiality with respect to such  
28

1 Materials; or (2) the Materials must be kept confidential under Ariz.  
2 Rev. Stat. §§ 36-322, 36-342, 36-344, under the Health Insurance  
3 Portability and Accountability Act of 1996 (“HIPAA”), or other  
4 applicable law. If any Defendant produces Confidential Information  
5 under the terms of this Order, then that Defendant shall be deemed to  
6 have satisfied its confidentiality obligations under the foregoing  
7 statutes, as applicable.

8 b. No designation of materials as “CONFIDENTIAL – SUBJECT TO  
9 PROTECTIVE ORDER” shall be made unless counsel for the  
10 designating Party or non-party believes in good faith that such  
11 information is “CONFIDENTIAL – SUBJECT TO PROTECTIVE  
12 ORDER,” as defined in Subparagraph a. Counsel for the designating  
13 Party or non-party shall make designations as narrowly and reasonably  
14 as practicable, including but not limited to designating only certain  
15 portions of documents as “CONFIDENTIAL – SUBJECT TO  
16 PROTECTIVE ORDER.” Confidential Information may include, but  
17 is not limited to, any sensitive documents or information produced by  
18 a Party or non-party, or any other information that constitutes  
19 confidential information under the Federal Rules of Civil Procedure  
20 and/or applicable laws or regulations including U.S. federal, state, or  
21 local privacy, data protection, or secrecy laws.

22 c. For illustrative purposes only, Confidential Information subject to  
23 designation under Subparagraph a, above, may include: personnel  
24 information, patient information, insurance or financial information,  
25 business records, names or other identifying information tending to  
26 reveal the identity of a Party, and any other highly sensitive  
27 information that could jeopardize Plaintiffs’ privacy information, or  
28 the privacy and security of the Defendants and/or the Arizona

1 Department of Health Services or the State of Arizona or any of its  
2 agencies or political subdivisions.

3 d. A Producing Party may designate Materials containing Confidential  
4 Information by affixing a legend or stamp on such Materials (except  
5 deposition transcripts, discussed below in Paragraph 3, or native  
6 materials, discussed below in Subparagraph e) as follows: The words  
7 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall be  
8 placed clearly on each page of the document where practical or, where  
9 not practical, prominently on at least the first page of such Materials.

10 e. For natively produced Materials containing Confidential Information,  
11 the filename shall be the production number, the confidentiality  
12 designation (“CONFIDENTIAL – SUBJECT TO PROTECTIVE  
13 ORDER”) shall be placed in the filename of each such natively  
14 produced document, and the slip sheet corresponding to such Materials  
15 shall include the production number and the confidentiality  
16 designation. In the event the Receiving Party of such natively  
17 produced Materials chooses to print or otherwise make a copy of such  
18 Materials, the printout or copy must be marked with the confidentiality  
19 designation.

20 f. The Parties agree that any Materials that are otherwise authentic for  
21 purposes of admissibility remain authentic even if stamped  
22 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”  
23 pursuant to this Order.

24 2. In the event the Producing Party elects to produce Materials for inspection,  
25 no marking need be made by the Producing Party in advance of the initial inspection. For  
26 purposes of the initial inspection, all Materials produced will be considered as  
27 “CONFIDENTIAL –SUBJECT TO PROTECTIVE ORDER,” and must be treated as such  
28 pursuant to the terms of this Order. Thereafter, upon selection of specified Materials for

1 copying by the Receiving Party, the Producing Party must, within a reasonable time prior  
2 to producing those Materials to the Receiving Party, mark the copies of those Materials that  
3 contain Confidential Information with the appropriate confidentiality marking.

4 3. Whenever a deposition taken on behalf of any Party involves the disclosure  
5 of Confidential Information of any Party or non-party:

6 a. The deposition or portions of the deposition must be designated as  
7 containing Confidential Information subject to the provisions of this  
8 Order; such designation must be made on the record whenever  
9 possible, but a Party or non-party may designate portions of  
10 depositions as containing Confidential Information after transcription  
11 of the proceedings; a Party or non-party will have until thirty (30) days  
12 after receipt of the deposition transcript to inform the other Party or  
13 Parties to the action of the portions of the transcript to be designated  
14 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

15 b. The disclosing Party or non-party will have the right to exclude from  
16 attendance at the deposition, during such time as the Confidential  
17 Information is to be disclosed, any person other than the deponent,  
18 Counsel (including their staff and associates), the court reporter, the  
19 additional persons referenced in Paragraph 5 below, and the person(s)  
20 agreed upon pursuant to Paragraph 8, below;

21 c. Any Materials containing Confidential Information that are used in the  
22 taking of a deposition shall remain subject to the provisions of this  
23 Order, along with the transcript pages of the deposition dealing with  
24 such Materials. In such cases, the court reporter shall be informed of  
25 this Order and shall be required to operate in a manner consistent with  
26 this Order. In the event the deposition is videotaped, the original and  
27 all copies of the videotape (or portions thereof) shall be marked by the  
28 video technician to indicate that the contents of the videotape are

1 subject to this Order, substantially along the lines of “This videotape  
2 may contain confidential testimony used in this case and is not to be  
3 viewed or the contents thereof to be displayed or revealed except  
4 pursuant to the terms of the operative Protective Order in this matter  
5 or pursuant to written stipulation of the Parties”; and

6 d. The originals of the deposition transcripts and all copies of the  
7 deposition must bear the legend “CONFIDENTIAL – SUBJECT TO  
8 PROTECTIVE ORDER,” as appropriate, and the original or any copy  
9 ultimately presented to a court for filing must not be filed unless it can  
10 be accomplished under seal, identified as being subject to this Order,  
11 and protected from being opened except by order of this Court.

12 4. Except as otherwise provided in this Order, all Confidential Information  
13 designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” must not be  
14 disclosed by the Receiving Party to anyone other than those persons designated within this  
15 Order and must be handled in the manner set forth below, and in any event, must not be  
16 used for any purpose other than in connection with this litigation, unless and until such  
17 designation is removed either by agreement of the Parties, or by order of the Court.

18 5. Information designated “CONFIDENTIAL –SUBJECT TO PROTECTIVE  
19 ORDER” may be viewed only by:

- 20 a. Counsel (as defined in Paragraph F in the above Definitions) of the  
21 Receiving Party;
- 22 b. Independent experts and stenographic and clerical employees  
23 associated with such experts. Prior to receiving any Confidential  
24 Information of the Producing Party, the expert must execute a copy of  
25 the “Agreement to Be Bound by Stipulated Protective Order,” attached  
26 hereto as Exhibit A. Counsel for the Receiving Party must retain  
27 executed copies of such exhibits;
- 28 c. The Court and any court staff and administrative personnel;

- 1 d. Any court reporter employed in this litigation and acting in that
- 2 capacity;
- 3 e. Any person indicated on the face of the document to be its author or
- 4 co-author, or any person identified on the face of the document as one
- 5 to whom a copy of such document was sent before its production in
- 6 this action.
- 7 f. The named Parties and the personnel employed by them, including
- 8 Party principals or executives who are required to participate in policy
- 9 decisions with reference to this action, who have been advised of their
- 10 obligations hereunder, and who have signed an “Agreement to Be
- 11 Bound by Stipulated Protective Order,” attached hereto as Exhibit A;
- 12 g. Technical personnel of the Parties with whom Counsel for the Parties
- 13 find it necessary to consult, in the discretion of such Counsel, in
- 14 preparation for trial of this action;
- 15 h. Stenographic and clerical employees associated with the individuals
- 16 identified above; and
- 17 i. Any other person expressly agreed to, in writing, by the Parties; where,
- 18 however, such person will have access to materials designated as
- 19 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” that
- 20 were produced by a non-party, the express written agreement of the
- 21 non-party must also be obtained.

22 6. At the time of delivery or disclosure, counsel of record for the Producing Party  
23 shall instruct any person to whom any Confidential Information is delivered or disclosed to  
24 maintain the confidentiality of all information protected by this Order and furnish to all such  
25 persons a copy of this Order. Counsel of record shall maintain a record of all persons  
26 outside of Counsel or the Parties (as defined above) to whom Confidential Information has  
27 been disclosed or delivered. Counsel must also maintain original executed “Agreements to  
28 Be Bound by Stipulated Protective Order.”

1           7.       In addition to designating Materials as “CONFIDENTIAL – SUBJECT TO  
2 PROTECTIVE ORDER,” a Producing Party may require redactions to such Materials,  
3 whether they are the Producing Party’s own materials or materials produced by another  
4 Party or non-party for use in this litigation. To the extent that a Party objects to any such  
5 redaction, the Parties shall address that dispute subject to the provisions of this Order set  
6 forth below.

7           8.       Before any Materials produced in discovery, answers to interrogatories,  
8 responses to requests for admissions, deposition transcripts, or other documents which are  
9 designated as Confidential Information are filed with the Court for any purpose, the Party  
10 seeking to file such material must seek permission of the Court to file the material under  
11 seal. Nothing in this Order shall be construed as automatically permitting a party to file  
12 under seal. The Party seeking leave of Court shall show “compelling reasons” (where the  
13 motion is more than tangentially related to the merits of the case) or “good cause” for filing  
14 under seal. *See Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir.  
15 2016). Additionally, such Party seeking to file under seal shall, within the applicable  
16 deadline, file a redacted, unsealed version of any motion, response or reply if such Party is  
17 waiting for a ruling from the Court on filing an unredacted, sealed version of the same  
18 document.<sup>1</sup> Further, any proceeding before the Court, including, but not limited, to  
19 conferences, hearings, or trial, whether held in open court or other means, shall be  
20 conducted in a manner that keeps confidential the identities of the Plaintiffs permitted to  
21 proceed under pseudonyms or otherwise reveal Confidential Information or Materials, or  
22 information contained in those Materials, designated as “CONFIDENTIAL – SUBJECT  
23 TO PROTECTIVE ORDER.” If a Party intends to use Confidential Information or  
24 Materials during a proceeding before the Court, that Party must notify the other Party no

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25 <sup>1</sup> If a Party wishes to use the opposing Party’s confidential designations to support or oppose  
26 a motion, the opposing Party bears the burden to make the “compelling reasons” or “good  
27 cause” showing. In the event the Party wishing to use the Confidential Information  
28 anticipates this scenario arising, the Party shall initiate a discovery dispute conference call  
consistent with the terms of the Court’s Rule 16 Scheduling Order at least fourteen (14)  
days before the due date of the filing in which the Party wishes to reference the information.

1 less than fourteen (14) days prior to the Court proceeding. That advance notice is required  
2 so that the Party can determine the safeguards needed to protect the confidentiality of that  
3 information or Materials and to meet and confer with other Party regarding a stipulation  
4 that implements those safeguards. If the Parties are unable to agree upon the necessary  
5 safeguards, the Party that designated that Confidential Information or Materials may seek  
6 Court intervention. Failure to seek such safeguards from the other Party or the Court shall  
7 not constitute an admission that the underlying information or materials are not confidential.

8 9. Except as otherwise provided in this Order, Confidential Information and  
9 Materials designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall  
10 be used solely for the prosecution or defense of this action. A Party who wishes to use  
11 Confidential Information and/or Materials designated “CONFIDENTIAL – SUBJECT TO  
12 PROTECTIVE ORDER” for a purpose other than the prosecution or defense of this action  
13 must request permission, in writing, from Counsel for the Producing Party. The Receiving  
14 Party’s request must identify the Confidential Information and/or Materials designated  
15 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” that the Receiving Party  
16 wishes to use, and identify the purpose for which it wishes to use Confidential Information  
17 and/or Materials designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”  
18 If the parties cannot resolve the question of whether the Receiving Party can use  
19 Confidential Information and/or Materials designated “CONFIDENTIAL – SUBJECT TO  
20 PROTECTIVE ORDER” for a purpose other than the prosecution or defense of this action  
21 within fourteen (14) days of the Producing Party’s receipt of such a request, the Receiving  
22 Party may move the Court for a ruling on the Receiving Party’s request. In the event any  
23 Party files a motion seeking to use Confidential Information and/or Materials designated  
24 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” for a purpose other than the  
25 prosecution or defense of this action, the Confidential Information and/or Materials  
26 designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall be  
27 submitted to the Court, under seal, for an in-camera inspection. Any Confidential  
28 Information and/or Materials designated “CONFIDENTIAL – SUBJECT TO

1 PROTECTIVE ORDER” at issue must be treated as Confidential Information, as  
2 designated by the Producing Party, until the Court has ruled on the motion or the matter has  
3 been otherwise resolved.

4 10. At any stage of these proceedings, any Party may object to a designation of  
5 Materials as Confidential Information. The Party objecting to confidentiality must notify,  
6 in writing, counsel for the Producing Party, of the objected-to Materials and the grounds for  
7 the objection. If the dispute is not resolved consensually between the parties within fourteen  
8 (14) days of receipt of such a notice of objections, the objecting Party may move the Court  
9 for a ruling on the objection. In the event any Party files a motion challenging the  
10 designation or redaction of information, the document shall be submitted to the Court, under  
11 seal, for an in-camera inspection. The Materials at issue must be treated as Confidential  
12 Information, as designated by the Producing Party, until the Court has ruled on the objection  
13 or the matter has been otherwise resolved. Nothing in the foregoing provisions shall be  
14 construed to obligate a Party to challenge the propriety of a designation at the time made,  
15 and a decision not to challenge a designation shall not preclude a subsequent challenge  
16 thereto (nor shall it constitute any admission or inference that the information is, or ever  
17 was, confidential).

18 11. At any stage of these proceedings, any Party may request that it be permitted  
19 to disclose Materials designated as Confidential Information to individuals not permitted  
20 by this Order to view such Materials. The Party must notify, in writing, counsel for the  
21 Producing Party of the identity of the relevant Materials and the individuals to whom the  
22 Party wishes to disclose the Materials. If the request is not resolved consensually between  
23 the parties within fourteen (14) days of receipt of such a request, the requesting Party may  
24 move the Court for a ruling allowing such disclosure. In the event any Party files a motion  
25 requesting such disclosure, the document shall be submitted to the Court, under seal, for an  
26 in-camera inspection. The Materials at issue must be treated as Confidential Information,  
27 as designated by the Producing Party, until the Court has ruled on the request.

28

1           12. All Confidential Information must be held in confidence by those inspecting  
2 or receiving it. To the extent the Confidential Information has not been disclosed prior to  
3 and apart from this litigation, it must be used only for purposes of this action, except as  
4 otherwise provided in this Order. If the Confidential Information was exchanged between  
5 the Parties prior to and apart from this litigation for purposes of conducting their respective  
6 businesses, the Parties may continue to use that otherwise Confidential Information for that  
7 purpose. The Parties may not distribute the Confidential Information beyond those persons  
8 or entities that had received the Confidential Information prior to this litigation. In addition,  
9 Counsel for each Party, and each person receiving Confidential Information, must take  
10 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such  
11 information. If Confidential Information is disclosed to any person other than a person  
12 authorized by this Order, the Party responsible for the unauthorized disclosure must  
13 immediately bring all pertinent facts relating to the unauthorized disclosure to the attention  
14 of the other Parties and, without prejudice to any rights and remedies of the other Parties,  
15 make every effort to prevent further disclosure by the party and by the person(s) receiving  
16 the unauthorized disclosure.

17           13. No Party will be responsible to another Party or non-party for disclosure of  
18 Confidential Information under this Order if the information in question is not labeled or  
19 otherwise identified as such in accordance with this Order.

20           14. If a Party or non-party, through inadvertence, produces any Confidential  
21 Information without labeling or marking or otherwise designating it as such in accordance  
22 with this Order, the Producing Party may give written notice to the Receiving Party that the  
23 Materials produced are deemed Confidential Information, and that the Materials produced  
24 should be treated as such in accordance with that designation under this Order. The  
25 Receiving Party must treat the Materials as confidential, once the Producing Party so  
26 notifies the receiving Party. The inadvertent or unintentional failure to designate discovery  
27 materials as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall not be  
28 deemed a waiver in whole or in part of a Producing Party’s claim of confidential treatment

1 under this Order. If the Receiving Party has disclosed the Materials before receiving the  
2 designation, the Receiving Party must notify the Producing Party in writing of each such  
3 disclosure. Counsel for the Parties will agree on a mutually acceptable manner of labeling  
4 or marking the inadvertently produced Materials as “CONFIDENTIAL – SUBJECT TO  
5 PROTECTIVE ORDER.”

6 15. This Order is entered to protect the confidentiality of information and  
7 facilitating the exchange of documents and information between the Parties and producing  
8 non-parties to this proceeding, without: (a) unreasonably or unnecessarily limiting or  
9 restricting the ability of the Parties and/or Counsel to develop their claims or defenses in  
10 this matter, (b) causing significant financial or personal harm or otherwise jeopardizing the  
11 well-being of the Plaintiffs or their family members, such that the involvement of the Court  
12 would not be unnecessarily required to resolve disputes over confidentiality, or  
13 (c) preventing any Party from complying with the obligations imposed under applicable  
14 public records, public information, and freedom of information acts. Nothing within this  
15 Order will prejudice the right of any Party to object to the production of any discovery  
16 material on the grounds that the material is protected as privileged or as attorney work  
17 product. This Order shall not be construed to require production of documents, information,  
18 or other material that a Party contends is protected from disclosure by the attorney-client  
19 privilege, the work product protection, or other privilege, doctrine, or immunity. If  
20 documents, information or other material subject to a claim of attorney-client privilege,  
21 work product protection, or other privilege, doctrine, or immunity are inadvertently or  
22 unintentionally produced, such production shall in no way prejudice or otherwise constitute  
23 a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. This Order shall  
24 be interpreted to provide the maximum protection allowed by Federal Rule of Evidence  
25 502(d). Any Producing Party that inadvertently or unintentionally produces documents,  
26 information, or other material it reasonably believes is protected under the attorney-client  
27 privilege, work product protection, or other privilege, doctrine, or immunity may obtain the  
28 return of such documents, information or other material by promptly notifying the

1 Receiving Party and providing a privilege log for the inadvertently or unintentionally  
2 produced documents, information or other material. The Receiving Party shall gather and  
3 return all copies of such documents, information, or other material to the Producing Party  
4 within five (5) business days, except for any pages containing privileged or otherwise  
5 protected markings by the Receiving Party, which pages shall instead be destroyed and  
6 certified as such to the Producing Party. Where it is reasonably apparent to a Receiving  
7 Party that the documents or information was inadvertently sent or produced, and the  
8 Receiving Party knows or reasonably should know that the documents or information is  
9 privileged or subject to the work product protection, the Receiving Party shall: (a) refrain  
10 from examining the documents or information any more than is necessary to determine that  
11 they are privileged or subject to the work product protection, (b) promptly notify the  
12 Producing Party, and (c) otherwise treat the information in compliance with Federal Rule  
13 of Civil Procedure 26(b)(5)(B).

14 16. Nothing in this Order will bar Counsel from rendering advice to their clients  
15 with respect to this litigation and, in the course thereof, relying upon any information  
16 designated as Confidential Information.

17 17. This Order will be without prejudice to the right of any Party to oppose  
18 production of any information for lack of relevance or any other ground other than the mere  
19 presence of Confidential Information. The existence of this Order must not be used by any  
20 Party as a basis for discovery that is otherwise improper under the Federal Rules of Civil  
21 Procedure.

22 18. Nothing herein shall (a) preclude the disclosure of Materials produced by any  
23 Party or non-party to this litigation that is legally mandated under public records, public  
24 information, and freedom of information acts, or (b) prevent any Party from discharging its  
25 duties or obligations under any other applicable statute, rule, or regulation, subject to the  
26 provisions set forth in Paragraph 22.

27 19. Information designated Confidential pursuant to this Order also may be  
28 disclosed if: (a) the Party or non-party making the designation consents to such disclosure;

1 (b) the Court, after notice to all affected persons, allows such disclosure; or (c) the Party to  
2 whom Confidential Information has been produced thereafter becomes obligated to disclose  
3 the information in response to a lawful subpoena, public records request, or a court order  
4 issued in other litigation.

5         20. If a Party is served with a public records request, subpoena, or court order as  
6 described in Paragraph 19, then that Party (the “Served Party”) must give prompt notice to  
7 counsel for the Producing Party that made the designation, regardless of whether the Served  
8 Party intends to assert any defenses or exemptions from complying with the public records  
9 request, subpoena, or court order. That notice must permit counsel for that Producing Party  
10 sufficient time to intervene and seek judicial protection from the enforcement of this  
11 subpoena, public records request, or court order, and/or seek the entry of an appropriate  
12 protective order in the action in which the subpoena or court order was issued. Unless the  
13 designating Party timely submits an objection seeking an order that the subpoena, public  
14 records request, or court order need not be complied with, and serves such objection upon  
15 the Served Party before the production date required by the subpoena, public records  
16 request, or court order, the Served Party shall be permitted to produce documents responsive  
17 to the subpoena, public records request, or court order on the response date. The designating  
18 Party shall bear its own burden and expense of seeking protection of its Confidential  
19 Information. Compliance by the Served Party with any order directing production pursuant  
20 to the subpoena, public records request, or court order regarding any Material containing  
21 Confidential Information shall not constitute a violation of this Order, provided that the  
22 notice required by this Paragraph has been satisfied, and nothing in these provisions should  
23 be construed as authorizing or encouraging a Receiving Party in this action to disobey a  
24 lawful directive from another court. In addition, and without limitation or waiver of any  
25 other protection from public disclosure afforded by Arizona or federal law, all produced  
26 Materials marked by the designating Party as “CONFIDENTIAL – SUBJECT TO  
27 PROTECTIVE ORDER”—and for which such designation has not been determined to be  
28 improper as a result of a challenge made under Paragraph 10—shall be presumptively

1 treated as exempt from disclosure pursuant to the Arizona Public Records Law, Ariz. Rev.  
2 Stat. § 39-101 *et seq.*, and not subject to a document-level review by an entity in receipt of  
3 a public records request.

4 21. Nothing in this Order shall limit any Producing Party's use of its own  
5 documents or shall prevent any Producing Party from disclosing its own Confidential  
6 Information to any person. Such disclosures shall not affect any confidential designation  
7 made pursuant to the terms of this Order so long as the disclosure is made in a manner  
8 which is reasonably calculated to maintain the confidentiality of the information. Nothing  
9 in this Order shall prevent or otherwise restrict Counsel from rendering advice to their  
10 clients, and in the course thereof, relying on examination of designated Confidential  
11 Information.

12 22. The Parties agree that Materials produced by any Party or non-party to this  
13 litigation may be disclosed, distributed, or otherwise provided by the Attorney General  
14 Mark Brnovich, the chief law enforcement officer of the State of Arizona, by Dr. Cara  
15 Christ, the Director of the Arizona Department of Health Services, who was sued in this  
16 action in her official capacity, or by any successors to their positions, to any law  
17 enforcement or regulatory agency or board, provided that the Attorney General or the  
18 Director of the Arizona Department of Health Services believes in good faith that doing so  
19 is necessary to discharge their duties as Attorney General or Director of the Arizona  
20 Department of Health Services.

21 23. Except for Materials disclosed, distributed, or otherwise provided by the  
22 Attorney General or the Director of the Arizona Department of Health Services under  
23 Paragraph 22, or Materials being used in accordance with an agency's or board's applicable  
24 statutes, rules, or regulations, within thirty (30) days of the final termination of this action,  
25 including any and all appeals, Counsel for each Party must purge all Confidential  
26 Information from all machine-readable media on which it resides and must either (a) return  
27 all Confidential Information to the Party or non-party that produced the information,  
28 including any copies, excerpts, and summaries of that information, or (b) destroy the same.

1 With respect to paper copies, return or destruction of Confidential Information is at the  
2 option of the Producing Party. Provided, however, that nothing in this Order shall be  
3 interpreted or construed to require any officer, employee, or agency of the State of Arizona  
4 to destroy any public records obtained in the ordinary course of such officer's or agency's  
5 duties, or which must be maintained in compliance with state law, federal law, or the  
6 regulations of such agency. Notwithstanding the foregoing, Counsel for each Party may  
7 retain all pleadings, briefs, memoranda, motions, and other documents filed with the Court  
8 that refer to or incorporate Confidential Information, and will continue to be bound by this  
9 Order with respect to all such retained information, after the conclusion of this litigation.  
10 Further, attorney work product Materials that contain Confidential Information need not be  
11 destroyed, but, if they are not destroyed, the person in possession of the attorney work  
12 product will continue to be bound by this Order with respect to all such retained information  
13 after the conclusion of this litigation, except that Counsel may use work product from this  
14 action in subsequent litigation, provided that Counsel does not use or disclose another  
15 Party's Confidential Information.

16 24. The restrictions and obligations set forth within this Order will not apply to  
17 any information that: (a) the Parties agree should not be designated Confidential  
18 Information, including Materials previously designated Confidential Information that the  
19 Parties subsequently agree in writing should not be designated under this Order; (b) the  
20 Parties agree, or the Court rules, is already public knowledge; or (c) the Parties agree, or  
21 the Court rules, has become public knowledge other than as a result of disclosure by the  
22 receiving Party, its employees, or its agents, in violation of this Order.

23 25. Any Party or non-party may designate as "CONFIDENTIAL – SUBJECT TO  
24 PROTECTIVE ORDER" any Materials that were produced during the course of this action  
25 without such designation before the effective date of this Order, as follows:

- 26 a. Parties or non-parties may designate such Materials by sending written  
27 notice of such designation, accompanied by copies of the designated  
28 Materials bearing the appropriate legend of "CONFIDENTIAL –

1 SUBJECT TO PROTECTIVE ORDER” to all other parties in  
2 possession or custody of such previously undesignated Materials. Any  
3 Party receiving such notice and copies of designated Materials  
4 pursuant to this Subparagraph shall return to the producing Party all  
5 undesignated copies of such Materials in its custody or possession, or  
6 shall affix the appropriate legend to all copies of the designated  
7 Materials in its custody or possession.

8 b. Upon notice of designation pursuant to this Paragraph, Parties shall  
9 also: (i) make no disclosure of such designated Materials or  
10 information contained therein except as allowed under this Order; and  
11 (ii) take reasonable steps to notify any persons known to have  
12 possession of such designated Materials or information of the effect of  
13 such designation under this Order.

14 c. All such designations must be made within thirty (30) days of the date  
15 of this Order.

16 d. To the extent any document produced before issuance of this Order  
17 was designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE  
18 ORDER,” it shall receive the same treatment as if designated as such  
19 under this Order, unless and until such document is re-designated to  
20 have a different classification under this Order.

21 26. Transmission by e-mail or facsimile is acceptable for all notification purposes  
22 within this Order.

23 27. This Order may be modified by agreement of the Parties, subject to approval  
24 by the Court.

25 28. The Court may modify the terms and conditions of this Order for good cause,  
26 or in the interest of justice, or on its own order at any time in these proceedings.

27 29. In the event additional parties join or are joined in this action, they shall not  
28 have access to Confidential Information designated under this Order until the newly joined

1 party by its counsel has executed and filed with the Court its agreement to be bound by this  
2 Order.

3 30. After termination of this action, the provisions of this Order shall continue to  
4 be binding, except with respect to those documents and information that became a matter  
5 of public record. This Court retains and shall have continuing jurisdiction over the parties  
6 and recipients of Confidential Information and Materials designated as confidential for  
7 enforcement of the provisions of this Order following termination of this litigation. Each  
8 person or entity that receives or produces any Confidential Information designated under  
9 this Order hereby agrees to subject itself to the jurisdiction of this Court for the purpose of  
10 any proceedings related to the performance under, compliance with, or violation of this  
11 Order.

12 31. Until such time as this Order has been entered by the Court, the Parties agree  
13 that upon execution by all the Parties it will be treated as though it has been "So Ordered."

14 Dated this 16th day of November, 2020.

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18 Honorable James A. Soto  
19 United States District Judge  
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**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

D.T., a minor, by and through his parent and next friend Lizette Trujillo; Jane Doe, a minor, by and through her parent and next friend Susan Doe; and Helen Roe, a minor, by and through her parent and next friend Megan Roe,  
  
Plaintiffs,  
v.

Case No. 4:20-cv-00484-TUC-JAS

**ACKNOWLEDGEMENT AND  
AGREEMENT TO BE BOUND BY THE  
PROTECTIVE ORDER**

Dr. Cara M. Christ, in her official capacity as State Registrar of Vital Records and Director of the State of Arizona’s Department of Health Services; Thomas Salow, in his official capacity as Branch Chief of the State of Arizona’s Division of Public Health Licensing Services at the Department of Health Services; and Krystal Colburn, in her official capacity as Bureau Chief and Assistant State Registrar of the State of Arizona’s Bureau of Vital Records,

I, \_\_\_\_\_, declare and state that:

1. I am employed as \_\_\_\_\_

by \_\_\_\_\_.

2. I have read the Stipulated Protective Order (the “Order”) entered in the

1 above-captioned case and have received a copy of the Order.

2 3. I promise that I will use any and all “CONFIDENTIAL – SUBJECT TO  
3 PROTECTIVE ORDER” information, as defined in the Order, given to me only in a  
4 manner authorized by the Order, and only to assist Counsel in the litigation of this matter.

5 4. I promise that I will not disclose or discuss such “CONFIDENTIAL –  
6 SUBJECT TO PROTECTIVE ORDER” information with anyone other than the persons  
7 described in Paragraph 5.

8 5. I acknowledged that, by signing this agreement, I am subjecting myself to  
9 the jurisdiction of the United States District Court for the District of Arizona with respect  
10 to the enforcement of the Order.

11 6. I understand that any disclosure or use of “CONFIDENTIAL – SUBJECT  
12 TO PROTECTIVE ORDER” information in any manner contrary to the provisions of the  
13 Order may subject me to sanctions for contempt of court.

14 7. I will return all “CONFIDENTIAL – SUBJECT TO PROTECTIVE  
15 ORDER” Materials (as defined in the Order) to the attorney who provided them to me,  
16 upon request by that attorney, and I shall not retain any copies of said Materials or any  
17 information contained within “CONFIDENTIAL – SUBJECT TO PROTECTIVE  
18 ORDER” Materials.

19

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

21

22 Executed on \_\_\_\_\_.

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\_\_\_\_\_  
Signature

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