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**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA
 TUCSON DIVISION**

Jane Doe, by her next friend and parents
 Helen Doe and James Doe; and Megan Roe,
 by her next friend and parents, Kate Roe and
 Robert Roe,

Plaintiffs,

v.

Thomas C. Horne in his official capacity as
 State Superintendent of Public Instruction;
 Laura Toenjes, in her official capacity as
 Superintendent of the Kyrene School
 District; Kyrene School District; The
 Gregory School; and Arizona Interscholastic
 Association Inc.,

Defendants.

Case No. 4:23-cv-00185-JGZ
 Hon. Jennifer G. Zipps

**Joint Motion for Entry of Protective
 Order and ESI Protocol**

**JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER AND ESI
 PROTOCOL**

Pursuant to Fed. R. Civ. P. 26 and other applicable law, the parties to this action jointly move for entry of a protective order to govern the use of confidential information and documents and to facilitate discovery and an ESI protocol concerning discovery of electronically stored information. The parties have discussed these issues and have agreed to the language of the proposed orders attached hereto as Exhibits 1 and 2.

1 By agreeing to the language of the proposed orders, the parties do not waive any
2 objection they may have to requests for documents or information that would be covered
3 by the proposed orders.

4 WHEREFORE, given the sensitive nature of this action and the privacy concerns
5 of the plaintiffs, the parties jointly request that the Court enter the attached orders.

6
7 Respectfully submitted this September 15, 2023.

8 **FOR PLAINTIFFS:**

9 /s/ Colin
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FOR DEFENDANTS:

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FOR DEFENDANT INTERVENORS:

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*Attorney for Defendant Intervenors Warren
Petersen and Ben Toma*

Exhibit 1

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Warren Petersen, in his official capacity as
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Representatives,

Intervenor-Defendants.

Case No. 4:23-cv-00185-JGZ
Hon. Jennifer G. Zipps

ORDER

[STIPULATED] PROTECTIVE ORDER

1
2 WHEREAS the Court has granted the motion of Plaintiffs Jane Doe and Megan
3 Roe, along with their respective parents Helen Doe and James Doe, and Kate Roe and
4 Robert Roe, to proceed under pseudonyms, (Dkt. 44);

5 WHEREAS the parties stipulate that there is good cause to protect from public
6 disclosure the actual identities of the parties proceeding by pseudonyms in this case;

7 WHEREAS the parties recognize that evidence relied upon by the parties and
8 Documents produced in discovery in the above-captioned matter may require the
9 exchange of highly confidential and private information beyond the identities of the
10 parties; and

11 WHEREAS the parties stipulate to the terms of this Protective Order (the
12 “Order”);

13 IT IS THEREFORE ORDERED THAT,

14 1. The term “Confidential Information” will mean and include information
15 disclosed, relied upon, or produced in this action (regardless of how it is generated,
16 stored, or maintained) that (i) qualifies for protection under Federal Rule of Civil
17 Procedure 5.2(a) or 26(c); (ii) contains personal identifying information, including the
18 names of any pseudonymous party (as well as the names of other individuals that would
19 reveal the identity of any pseudonymous party), social security numbers, taxpayer
20 identification numbers, birth dates, addresses, telephone numbers, or financial account
21 information; (iii) contains any individual’s privacy-protected personal health information;
22 (iv) constitutes, includes, or is contained in “records” subject to the Privacy Act,
23 5 U.S.C. § 552a; or (v) reflects any other information the confidentiality of which the
24 disclosing party is under a legal duty to protect.

25 2. The term “Document” shall include, but is not limited to: correspondence;
26 memoranda; email; clinician and/or patient information; materials that identify clinicians,
27 and/or patients or potential patients; insurance information; letters; statements; audio
28 and/or video recordings; photographs; motion pictures; sketches; drawings; notes of

1 discussions with third parties; other notes; business reports; instructions; disclosures;
2 other writings; internet archives; answers to interrogatories; responses to requests for
3 admissions; trial testimony; deposition testimony; transcripts of trial testimony and
4 depositions, including data, summaries, and compilations derived therefrom; and any
5 other electronically stored information (“ESI”).

6 3. The term “Producing Party” shall mean any party which relies upon,
7 discloses to another party, or produces, any Confidential Information, which shall be
8 designated “Confidential” or “Highly Confidential – Attorney’s Eyes Only.”

9 4. The parties may, in good faith, designate in whole or in part as
10 “Confidential” or “Highly Confidential – Attorney’s Eyes Only” any Document that
11 contains Confidential Information.

12 a. Designation as “Confidential”: Any party may designate a Document
13 as “Confidential” only if, in the good faith belief of such party and its
14 counsel, the unrestricted disclosure of the Confidential Information
15 could cause harm in the form of lost privacy, discrimination, or
16 harassment, or could be harmful to any party’s business or operations.

17 b. Designation as “Highly Confidential – Attorney’s Eyes Only”: Any
18 party may designate a Document as “Highly Confidential – Attorney’s
19 Eyes Only” only if, in the good faith belief of such party and its
20 counsel and despite the provisions of this Order, there may be a
21 substantial risk of harm to the disclosing party if that Document and its
22 Confidential Information is disclosed to all other parties or non-parties
23 to this action.

24 5. Such designation may be made by stamping “Confidential” or “Highly
25 Confidential – Attorney’s Eyes Only” on a Document or, if a Document cannot be
26 stamped, by including “Confidential” or “Highly Confidential – Attorney’s Eyes Only” in
27 the Document file name. A Document that is not stamped or named “Confidential” or
28 “Highly Confidential – Attorney’s Eyes Only” is not restricted in its use unless otherwise

1 provided by law. If a party inadvertently or mistakenly discloses or produces a
2 Document without designating it as provided in this order, the Producing Party may give
3 written notice to the receiving party that the Document at issue is “Confidential” or
4 “Highly Confidential – Attorney’s Eyes Only” and should be treated as such in
5 accordance with this order. In such instance, the Producing Party shall also provide
6 copies of the material at issue properly designated as required under this order within a
7 reasonable time. Upon receipt of such notice, the receiving party shall treat such
8 information consistent with the redesignation.

9 6. Disclosure, production, or designation of Documents pursuant to this Order
10 shall not constitute a ruling on discoverability, relevance, or admissibility of the
11 Documents or the information contained therein.

12 7. All Documents filed with this Court that are designated as “Confidential”
13 or “Highly Confidential – Attorney’s Eyes Only” shall be filed according to the District
14 of Arizona Local Rules of Civil Procedure. *See* LRCiv. 5.6.

15 8. In all publicly-filed Documents and at all public hearings and trials before
16 this Court, the pseudonymous parties shall be identified and referred to only by their
17 pseudonyms.

18 9. If a party seeks to use in any way at any public hearing or trial before this
19 Court a Document designated as “Confidential” or “Highly Confidential – Attorney’s
20 Eyes Only,” then counsel for the parties shall confer on procedures necessary to protect
21 the confidentiality of that Document and the Confidential Information contained in the
22 Document. Such Document and the Confidential Information contained therein shall not
23 lose its protected status through such agreed-upon use.

24 10. Upon request by another party, counsel for a pseudonymous party who will
25 provide live, recorded, or written testimony in this case, shall disclose the identity of the
26 party to counsel for the requesting party. The identities of persons subject to this order
27 shall be used only for purposes of this litigation, and may be shared only as set
28 forth herein. Individuals to whom the pseudonymous parties’ identities, or any

1 Documents designated as “Confidential” or “Highly Confidential – Attorney’s Eyes
2 Only,” are disclosed pursuant to this paragraph shall not further disclose that information
3 to any other person except as allowed herein.

4 11. Documents designated as “Confidential” or “Highly Confidential –
5 Attorney’s Eyes Only” shall be used solely for purposes of this litigation and may not be
6 used for any other purpose except as required by law.

7 12. Defendants and their counsel shall not disclose the identities of the
8 pseudonymous parties, or any Documents designated as “Confidential” or “Highly
9 Confidential – Attorney’s Eyes Only,” to any person authorized to or involved in
10 investigating, prosecuting, or otherwise enforcing any actual, alleged, or possible
11 violation of any law or regulation, including Ariz. Rev. Stat. § 15-120.02 (the “Act”),
12 except as required by law. Nothing in this agreement shall prevent any person authorized
13 to or involved in investigating, prosecuting, or otherwise enforcing any actual, alleged, or
14 possible violation of any law or regulation from using independently developed evidence
15 or information to enforce any law or regulation.

16 13. Counsel for the parties may disclose the identities of the pseudonymous
17 parties, as well as Documents designated as “Confidential” or “Highly Confidential –
18 Attorney’s Eyes Only,” to counsel for the parties and their employees and agents,
19 including any expert witness retained for this case, but only to the extent necessary to
20 litigate this case and only after the person to whom disclosure will be made has read this
21 order and agreed to be bound by it by signing an undertaking to that effect, such as that
22 attached to this order as Attachment A, except counsel for the parties are not required to
23 sign Attachment A or a similar undertaking. Counsel for the parties may disclose the
24 identities of the pseudonymous parties and Documents designated as “Confidential” to
25 the parties, but only to the extent necessary to litigate this case and only after the person
26 to whom disclosure will be made has read this order and agreed to be bound by it by
27 signing an undertaking to that effect, such as that attached to this order as Attachment A.
28 All persons who sign such an undertaking, including that attached to this order as

1 Attachment A, should retain that signed form for two years after the final termination of
2 this case (including disposition of all appeals). Counsel shall not disclose the identities of
3 pseudonymous parties, or “Confidential” or “Highly Confidential – Attorney’s Eyes
4 Only” documents to anyone else who is not specified in this paragraph.

5 14. Except as provided in this Order, under no circumstances shall any person
6 disclose the identities of the pseudonymous parties, or any Documents designated as
7 “Confidential” or “Highly Confidential – Attorney’s Eyes Only.”

8 15. If a person discloses the identity of a pseudonymous party, a Document
9 designated as “Confidential” or “Highly Confidential – Attorney’s Eyes Only,” in a
10 manner not authorized in this order, that person must immediately and in writing notify
11 the Producing Party of all pertinent facts relating to such disclosure and, without
12 prejudice to other rights and remedies of the Producing Party, make every effort to
13 prevent further disclosure by the recipient or by the person to whom the recipient
14 disclosed such information.

15 16. If any specific issues related to nondisclosure of the pseudonymous
16 parties’ identities arise during the course of this case, the parties shall seek to resolve
17 those issues without court intervention. If the parties cannot agree, they shall seek further
18 direction from this Court.

19 17. The parties agree to be bound by the terms of this Order pending entry by
20 the Court, and any violation of its terms shall be subject to the same penalties and
21 sanctions as if this order had been entered by the Court.

22 18. Within 60 days after final termination of this case (including final
23 disposition of any appeals), all unredacted Documents designated as “Confidential” or
24 “Highly Confidential – Attorney’s Eyes Only” shall be returned to the Producing Party or
25 destroyed, at the option of the Producing Party. At the request of the Producing Party, a
26 party shall certify in writing that it has undertaken its best efforts to destroy or return such
27 Documents and that such Documents have been returned or destroyed to the best of its
28 knowledge.

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v.

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Defendants,

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Speaker of the Arizona House of
Representatives,

Intervenor-Defendants.

Case No. 4:23-cv-00185-JGZ
Hon. Jennifer G. Zipp

**Declaration and Agreement to be
Bound by Stipulated Protective Order**

**DECLARATION AND AGREEMENT TO BE BOUND BY STIPULATED
PROTECTIVE ORDER**

I, _____, hereby attest to my understanding that information or Documents designated “Confidential” or “Highly Confidential – Attorney’s Eyes Only” are provided to be subject to the Stipulated Protective Order (“order”) entered by the Court in the above-captioned litigation, Dkt. ____; that I have been given a copy of and have read the order; and that I agree to be bound by its terms. I also understand that my execution of this Declaration and Agreement to be Bound by the Stipulated Protective Order (“Declaration”) is a prerequisite to my review of any information or Documents designated as “Confidential” or “Highly Confidential – Attorney’s Eyes Only” pursuant to the order.

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I further agree and attest to my understanding that, if I fail to abide by the terms of the order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court for the District of Arizona for the purposes of any proceedings related to enforcement of the order, even if such enforcement proceedings occur after termination of this action.

I agree to be bound by and to comply with the terms of the order as soon as I sign this declaration.

Executed this ____ day of _____, _____.

Signature

Name (Printed)

Exhibit 2

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STIPULATED ORDER
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION

1 **I. PURPOSE**

2 This Order supplements the provisions of Rules 26 and 34 concerning discovery of
3 electronically stored information (“ESI”), Local Rules, and any other applicable orders
4 and rules. This Order does not displace Rules 26 or 34 or diminish a party’s obligations
5 to search for, collect, and produce discoverable information that is kept in the ordinary
6 course as ESI.

7 **II. COOPERATION**

8 The parties are aware of the importance the Court places on cooperation and
9 commit to cooperate in good faith consistent with this ESI Order.

10 **III. DEFINITIONS**

11 The following definitions will apply in this Order:

12 **A. Bates Number** means a unique alphanumeric identifier associated with
13 every physical sheet of paper, electronic file, electronically stored TIFF image, or other
14 tangible thing, consisting of (1) an alphabetic portion identifying the producing party
15 and/or other characteristics of the production and (2) a numeric portion incremented
16 according to a scheme defined at the producing party’s discretion to ensure that the
17 alphanumeric identifier for each physical sheet of paper, electronic file, electronically
18 stored TIFF image, or other tangible thing is unique. The alphanumeric identifier shall be
19 no more than sixteen (16) characters in length.

20 **B. Document** means anything subject to production or inspection under
21 Federal Rule of Civil Procedure 34(a), including (1) any document or electronically
22 stored information—including writings, drawings, graphs, charts, photographs, sound
23 recordings, images, and other data or data compilations—stored in any medium from
24 which information can be obtained either directly or, if necessary, after translation by the
25 responding party into a reasonably usable form or (2) any tangible thing.

26 **C. ESI** means any electronically stored file or information kept as such in the
27 ordinary course, consistent with Federal Rule of Civil Procedure 34, including without
28 limitation (1) electronically stored email messages; (2) word processing documents

1 (created with, for example, Microsoft Word or WordPerfect); (3) files formatted for
2 display in a web browser, for example, files with an .htm, .html, .php, or .cfm extension;
3 (4) Adobe Acrobat files; (5) ASCII text files, for example, files with a .txt file extension;
4 (6) presentation documents and embedded files (created with, for example, Microsoft
5 PowerPoint); and (7) spreadsheets, databases, and other equivalent documents.

6 **D. Hard Copy Document** means a Document kept in physical form, as
7 opposed to electronic form, in the ordinary course of a party's business.

8 **E. Native Format** means the associated file structure defined by the original
9 application with which an electronic file was created. For example, the Native Format
10 associated with a Microsoft Word 2007 file is .docx and the Native Format associated
11 with an Adobe Acrobat file is .pdf.

12 **F. Spreadsheet** means an electronic file that displays multiple cells that
13 together make up a grid consisting of rows and columns, each cell containing either
14 alphanumeric text or numeric values, including, but not limited to, files created with
15 Microsoft Excel.

16 **IV. PRODUCTION PROTOCOLS FOR ESI**

17 **A. ESI.** Electronically stored information ("ESI") and paper documents that
18 are produced as scanned images shall be produced as black and white Group IV single-
19 page TIFF (300 DPI, 1 bit) with the following exceptions: (1) documents that are in color
20 shall be produced as single page color jpegs (.JPG) and (2) certain documents identified
21 in B., below, shall be produced in native format. If after reviewing any black and white
22 document, a Receiving Party believes that color is critical to a document, the parties
23 agree to engage in discussion regarding production of documents in color, which
24 production shall not be unreasonably withheld. The Parties shall make reasonable efforts
25 to produce a corresponding ".DAT" file that extracts Metadata into fields in a delimited
26 database load file and a corresponding OPT (Opticon) load file that relates to a set of
27 images that indicates where individual pages belong together as Documents (i.e., shall
28 contain all document breaks) and to accompany the TIFF image. An Opticon load file

1 (OPT) shall be provided in a format to facilitate the loading of images into a Document
2 review application, such as Relativity. The required Metadata fields are outlined in
3 Exhibit A and shall be provided if available for that document. If other Documents
4 warrant a different format than outlined above, the Parties shall cooperate to arrange for
5 the mutually acceptable Production of such Documents. The Parties agree not to degrade
6 the searchability of Documents as part of the Document Production process.

7 **B. Native Format.** The Parties have agreed that the following file types shall
8 be Produced in Native Format, whether they exist as attachments to emails or as
9 standalone files: spreadsheets (i.e. Excel), .csv files, and audio or visual files, such
10 as .wav or .mpeg files. In addition to the foregoing, a party may request that a Document
11 originally Produced in TIFF or JPEG format, for example PowerPoint presentations, be
12 Produced in Native, if the converted format caused adverse formatting changes or lost
13 potentially relevant substantive content. All Native Files shall be named with the
14 beginning Bates number of the Produced Document to which the Native File relates
15 according to the instructions provided in Section IV.E. The original file name of the
16 Native shall be provided inside the FILENAME field in the load file containing the
17 Document's Metadata. In addition, a corresponding single-page TIFF placeholder shall
18 be provided with the text "Produced in Native" across the page and endorsed with proper
19 Bates number and any confidentiality designations.

20 **C. Hard Copy Documents.** The parties agree to use reasonable efforts to
21 ensure that hard copy (paper) documents shall be scanned, logically unitized, and
22 produced electronically as specified in the form of production above. This provision does
23 not obligate any party to produce documents in a manner other than in which those
24 documents were kept in the ordinary course of business; for example, hard copy
25 documents that have not been scanned into electronic form prior to the date of production
26 may be produced in the same manner in which they are maintained (e.g., hard copies).
27 Copies of such hard copy documents may be made available for inspection and copying
28 or may be delivered to the office of counsel for the requesting party.

1 **D. Parent-Child Relationships.** The association between a parent document
2 and any attachment (a “Parent-Child Relationship”) shall be preserved whenever
3 reasonable in such a way that a Document and any attachments to that Document are
4 produced in the same production set and are identifiable as parent and child.

5 **E. Attachments.** As a standard practice, responsive documents shall be
6 provided with full family members (parent emails and attachments), even if some
7 attachments may be non-responsive, with the exception that parent emails or attachments
8 that may contain information that is otherwise protected may be withheld.

9 **F. De-duplication.** The parties shall use their best efforts to de-duplicate
10 documents as necessary prior to producing them, meaning that exact duplicates of a
11 document (*i.e.*, all duplicates having the same MD5 hash value as the original document)
12 shall be removed to the best of the producing party’s ability from the entire population of
13 documents to be produced.

14 **G. Email Thread Analysis.** Email thread analysis may be used to reduce the
15 volume of emails reviewed and produced. The produced emails shall include all of the
16 responsive information from a thread, including attachments. For example, if an email in
17 a string deviates from the thread such that it contains attachments that are not included in
18 the most complete thread, then that individual email and its attachments shall also be
19 produced.

20 **H. Email Redactions.** In the event that the producing party finds that
21 redactions are needed, the producing party shall redact only privileged information within
22 the body of the email, in addition to the subject line, if it reveals privileged information.
23 Other identifying information, such as the To/From/Bcc, for example, shall not be
24 redacted. The parties may redact or remove certain metadata if it reveals privileged
25 information.

26 **I. Privilege Logs.** Subject to the exception in sub-section I.3, below, parties
27 shall provide a log of all documents withheld on the basis of privilege, work product
28 protection, or other privilege. For hard copy documents, each party shall create privilege

1 logs using the standard privilege log. For electronic documents, each party may opt at its
2 own discretion to create privilege logs using one of the following methods:

3 1. Automated Log. An automated privilege log shall be generated from
4 the following metadata fields to the extent they exist, as electronic metadata associated
5 with the original electronic documents.

6 a. LOG NO. (coded field)

7 b. BEG BATES (for redacted documents)

8 c. END BATES (for redacted documents)

9 d. DATE FAMILY

10 e. FILE TYPE

11 f. SENT FROM

12 g. SENT TO

13 h. SENT CC

14 i. SENT BCC

15 j. PRIVILEGE REASON (coded field)

16 k. PRIVILEGE DESCRIPTION and SUBJECT MATTER (coded
17 field)

18 l. ATTORNEYS (the parties agree to indicate who on the email chain
19 is an attorney (or legal staff), including identifying anyone not
20 appearing on the top line email)

21 The parties agree that privilege log fields for email strings shall contain the
22 information from the top email in the email string. Parties shall also populate a field with
23 all other attorneys (and legal staff) identified on the face of the document not already
24 captured in the top email of the email string. Attachments shall be identified as such if it
25 assists with the clarity of the log. The fields for PRIVILEGE REASON and PRIVILEGE
26 DESCRIPTION and SUBJECT MATTER shall properly include all information as
27 required by the Local and Federal Rules. Should the receiving party in good faith have
28 reason to believe a particular entry on the Automated Log does not reflect a privileged

1 document, or does not provide sufficient information whereby the receiving party can
2 assess if a claim of privilege is proper, it may request a Standard Log for that entry, to be
3 produced within two weeks of the request, or within such other reasonable time as the
4 parties may agree or the Court may order.

5 2. Standard Log. A standard privilege log shall include these standard
6 fields: author/sender/from; recipients/to; cc; bcc; custodian; date; privilege type; and a
7 description sufficient to identify the subject of the document and the basis for the
8 privilege assertion. The privilege log fields for email strings shall contain the
9 information from the top email in the email string. Parties shall also populate a field with
10 all other attorneys (and legal staff) identified on the face of the document not already
11 captured in the top email of the email string.

12 3. Documents created for purposes of litigating this lawsuit containing
13 privileged and/or work product material relating to the lawsuit do not need to be logged.

14 **J. Databases.** Each party may specify the form in which ESI is to be
15 produced when that ESI is generated by or maintained in Microsoft Access or other
16 database software. If the Producing Party objects to such form, the parties shall
17 undertake reasonable efforts and, if necessary, shall meet and confer to resolve any
18 disagreements as to production format prior to the time for production. Where a party
19 produces Microsoft Access or other database software files only in native format, the
20 producing party shall provide a corresponding image (TIFF) placeholder that contains the
21 Bates number and Confidentiality designation of the file.

22 **K. Rule 26 Standard.** The parties agree that if a party designates a data
23 source as not reasonably accessible, it shall be assessed using the factors established in
24 Federal Rule of Civil Procedure 26 (and case law interpreting the same).

25 **L. No Backup Restoration Required.** Absent a showing of good cause, no
26 party need restore any form of media upon which backup data is maintained in a party's
27 normal or allowed processes, including, but not limited to, backup tapes, disks, SAN, or
28 other forms of media, in order to comply with its discovery obligations in the present case.

1 **M. Voicemail and Mobile Devices.** The parties agree that voicemails, PDAs,
2 and mobile devices are generally deemed not reasonably accessible and therefore need
3 not be preserved and collected in the course of responding to ordinary document requests.
4 However, to the extent that there is specific voicemail and/or mobile device data that is
5 relevant to a disputed issue in in this Action, such as the content of a particular
6 communication between the parties, the parties agree to produce such documents in
7 response to a specific request for discrete voicemail and/or mobile device data.

8 **N. No Obligation to Convert Third Party Productions.** The parties agree
9 that any document production received from a third party shall be produced in the format
10 in which it was received.

11 **O. Rolling Productions.** The parties agree to produce documents on a rolling
12 basis.

13 **P. Method of Production.** The parties agree that documents produced shall
14 be made available via secure file transfer (e.g., SecureShare) if requested by the receiving
15 party. If a production is too large for secure file transfer, documents shall be produced on
16 a secure CD/DVD, thumb drive, hard drive or similar media.

17 **V. NON-WAIVER OF PRIVILEGE**

18 **A.** Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of
19 privileged or work product protected information, including but not limited to as part of
20 an ESI production, is not a waiver in the pending case or in any other federal, state, or
21 administrative proceeding. If a party producing information (“Producing Party”) gives
22 notice to parties receiving the information (“Receiving Party”) that inadvertently
23 produced documents, materials, or information are subject to a claim of privilege, work-
24 product protection, or any other privilege or protection, the obligations of the receiving
25 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B), and in addition
26 the parties shall follow the following procedures:

27 1. Inadvertent Production Discovered by Producing Party. If a
28 Producing Party unintentionally or inadvertently discloses information that it believes is

1 protected, privileged, or otherwise immune from discovery, the Producing Party shall, as
2 soon as reasonably possible upon discovery of the disclosure, so advise the Receiving
3 Party in writing, explain why the information is protected or privileged, and request the
4 information be returned or destroyed. To the extent the inadvertently produced
5 documents are responsive to the Receiving Party's requests for production and not
6 otherwise excused from logging pursuant to this Order, this information shall
7 nevertheless be included on a privilege log when logs are exchanged in accordance with
8 the case schedule.

9 2. Inadvertent Production Discovered by Receiving Party. If a
10 Receiving Party learns of any unauthorized disclosure of privileged or protected
11 information, or reasonably believes privileged or protected information has been
12 inadvertently disclosed by the Producing Party, the Receiving Party shall immediately
13 upon learning of such disclosure inform the Producing Party and shall make all
14 reasonable efforts to prevent further disclosure by each unauthorized person who
15 received such information unless and until the Producing Party confirms that the
16 information is not privileged or protected.

17 3. Procedure After Inadvertent Disclosure Is Identified. Once a
18 Producing Party identifies such privileged or protected information (either on its own or
19 after confirming a Receiving Party's discovery), except as stated in Paragraph V.A.4, a
20 Receiving Party: (1) shall not use, and shall immediately cease any prior use of, such
21 information; (2) shall immediately take reasonable steps to retrieve the information from
22 others to which the Receiving Party disclosed the information; (3) shall immediately, and
23 not later than fourteen (14) calendar days after receipt of the Producing Party's request,
24 return to the Producing Party or destroy the information and destroy all copies,
25 summaries, compilations, or portions thereof; and (4) shall confirm to the Producing
26 Party the destruction under (3) above of all copies of the information not returned to the
27 Producing Party. The Receiving Party shall not use or disclose the privileged or protected
28 information during any aspect of this case or any other matter. The cost, if any, for

1 excising such information by the Receiving Party shall be borne by the Producing Party.
2 Notwithstanding this provision, no Party or its outside counsel shall be required to return
3 or destroy any information that may exist on any disaster recovery backup system, and to
4 the extent that any such information has been used, included, referenced, or summarized
5 in a pleading, deposition, or other proceeding, nothing in this paragraph shall require a
6 Receiving Party to purge, redact or excise any such information that has been used in
7 good faith before a request for the return of the unintentionally produced information.

8 4. Dispute Regarding Privileged or Protected Designation. If a
9 Receiving Party disagrees that information is privileged or protected, the parties shall
10 meet and confer in good faith to try to resolve the dispute, and if they cannot, any party
11 may seek court intervention, but unless and until a court rules on the matter, the
12 Receiving Party shall treat the information as privileged or protected, meaning it shall not
13 use or disclose the information and shall otherwise follow all obligations outlined above,
14 provided, however, that it shall have no obligation under Paragraph V.A.3 to collect,
15 destroy, or return the information unless or until a court rules on the issue.

16 **VI. SCOPE OF AGREEMENT**

17 This Order may be modified by a Stipulated Order of the parties, by agreement, or
18 by the Court for good cause shown. Nothing in this Order is intended to, nor does, waive
19 any objections to discovery or admissibility, or any other privileges or immunities, or,
20 except as specifically provided herein, impose obligations different than those contained
21 in the Federal Rules of Civil Procedure and/or the Federal Rules of Evidence. The parties
22 recognize that additional issues or unforeseen circumstances may arise in the course of
23 discovery, and nothing in this Order is intended to, nor does, restrict the ability of any
24 party to request additional information or seek additional relief from the Court. The
25 parties each retain the right to seek exceptions, amendments, or modifications to this
26 Order from the Court.

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DONE and ORDERED this ____ day of September, 2023.

Honorable Jennifer G. Zipps
United States District Judge