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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ST. LUKE'S HEALTH SYSTEM, LTD.,

Plaintiff,

v.

RAÚL LABRADOR, Attorney General of the State of Idaho,

Defendant.

Case No. 1:25-cv-00015-BLW

DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

The Attorney General notifies the Court of a recent decision of another magistrate within the District of Idaho rejecting the requested language in Section 11 of St. Luke's proposed protective order.[1]

- Attached as **Exhibit 1** is the court's decision in *Matsumoto v. Labrador*, No. 1:23-cv-00323-DKG, Dkt. 94, signed by the Honorable Debora K. Grasham, United States Magistrate Judge, and dated December 5, 2025.

For context, the Attorney General also provides the Matsumoto parties' briefing that led to this order, and the recently adopted Stipulated Protective Order:

- Attached as **Exhibit 2** is the Matsumoto plaintiffs' brief in support of its motion for protective order, No. 1:23-cv-00323-DKG, Dkt. 78; attached as **Exhibit 3** is the Matsumoto plaintiffs' proposed protective order, No. 1:23-cv-000323-DKG, Dkt. 78-1.
- Attached as **Exhibit 4** is the Matsumoto defendant's brief in opposition to the motion for protective order, No. 1:23-cv-00323-DKG, Dkt. 82.
- Attached as **Exhibit 5** is the Matsumoto plaintiffs' reply brief, No. 1:23-cv-00323-DKG, Dkt. 85.
- Attached as **Exhibit 6** is the recently adopted Stipulated Protective Order, No. 1:23-cv-00323-DKG, Dkt. 107.

The *Matsumoto* court's decision, specifically Dkt. 94 at 9–10, is relevant to the motions for protective order pending before this Court, particularly the Attorney General's opposition to proposed Section 11. Below is a comparison of the language from the proposed protective orders.

[1] This decision would also be relevant to Section 1 and the Attorney General's objection to that language as it was originally proposed in Dkt. 70-1. But St. Luke's has amended Section 1 in its most recent filing. Dkt. 74-1.

St. Luke's, Dkt. 70-1 at 12–13; Dkt. 74-1 at 12-13	***Matsumoto***, Ex. 3, at 11–12
11. SEEKING OF MEDICAL RECORDS Nothing in this Protective Order authorizes counsel for St. Luke's or the Defendant to obtain medical records or information through means other than formal discovery requests, subpoenas, depositions, or pursuant to a patient authorization. Moreover, the Parties' agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. .	11. SEEKING OF MEDICAL RECORDS Nothing in this Protective Order authorizes counsel for Plaintiffs or the Defendant to obtain medical records or information through means other than formal discovery requests, subpoenas, depositions, or pursuant to a patient authorization. Moreover, the parties agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.

DATED: January 6, 2026

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ *Brian V. Church*
BRIAN V. CHURCH
Lead Deputy Attorney General

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on January 6, 2026, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Exhibit 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE, Plaintiffs, v. RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho, Defendant.	Case No. 1:23-cv-00323-DKG ORDER

INTRODUCTION

Before the Court is Plaintiffs' Motion for Entry of a General Protective Order governing the disclosure of documents. (Dkt. 78). The matter is fully briefed and ripe for consideration. (Dkt. 80, 82, 85). The facts and legal arguments are adequately presented in the record. Accordingly, in the interest of avoiding delay, and because the decisional process would not be significantly aided by oral argument, the motion will be decided on the record. For the reasons that follow, the motion will be granted in part and denied in part.

BACKGROUND

This case involves challenges to the constitutionality of Idaho Code Section 18-623, "which criminalizes 'abortion trafficking' defined as '[a]n adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion,…or obtains an abortion-inducing drug…by recruiting, harboring, or transporting the pregnant minor within' the state of Idaho." *Matsumoto v. Labrador*, 122 F.4th 787, 796 (9th Cir. 2024) (quoting I.C. § 18-623(1)). Plaintiffs are an individual and two advocacy organizations who seek to counsel pregnant minors in Idaho and provide material support to access legal abortion in other states. *Id.* at 795. Defendant is the Idaho Attorney General. Plaintiffs assert claims alleging Idaho Code Section 18-623 is void for vagueness under the Fourteenth Amendment, infringes on their First Amendment rights to speak and associate, and infringes on their right to interstate travel. (Dkt. 1, 41). Defendant asserts affirmative defenses, including: immunity, lack of standing, failure to state a claim, lack of jurisdiction, relief inconsistent with state law, and unclean hands. (Dkt. 65).

The parties have been engaged in discovery for some time, with a current discovery deadline of March 16, 2026. (Dkt. 64, 69, 80, 92). The Court has conducted an informal conference and held a status conference, to address discovery matters. (Dkt. 71, 81). The parties have conferred in good faith, but are unable to agree on certain discovery disputes and the terms of a protective order. Consequently, Plaintiffs filed the instant

motion seeking entry of a general protective order governing the disclosure of documents. (Dkt. 78).[1]

STANDARD OF REVIEW

"[D]iscovery is 'presumptively public.'" *Fierro Cordero v. Stemilt AG Servs., LLC*, 142 F.4th 1201, 1207 (9th Cir. 2025) (quoting *San Jose Mercury News, Inc. v. U.S. Dist. Ct.-N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999)). Despite this presumption, the court may, for good cause, issue an order to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" resulting from public disclosure of information obtained during discovery. *Id.* (quoting Fed. R. Civ. P. 26(c)(1)). "The Supreme Court has interpreted this language as conferring 'broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.'" *Phillips ex. rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). Indeed, Rule 26(c) provides a variety of methods for the district court to protect a party or a person from discovery. *Moore v. Battelle Energy Alliance, LLC*, 2023 WL 1767391, at *3, n. 4 (D. Idaho Feb. 2, 2023) (listing Rule 26(c)(1)(A)-(H)).

Where, as here, a party seeks a blanket protective order for a category of information or materials the party believes in good faith is confidential or otherwise

[1] Plaintiffs filed a separate motion for entry of a protective order regarding disclosure of nonparties' identities and inquiries about alleged criminal conduct. (Dkt. 79). The Court will address that motion in a separate order.

subject to protection, the party seeking a protective order has the burden of establishing good cause. *Id.* at *4.[2] Good cause is shown when a party sets forth the specific harm or prejudice that will result in the absence of a protective order. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Id.* (citation omitted). "If a court finds particularized harm will result from disclosure of information to the public, then it balances the public and private interests to decide whether a protective order is necessary." *Phillips*, 307 F.3d at 1211. Courts making this determination consider the following non-mandatory, non-exhaustive factors:

1) whether disclosure will violate any privacy interests;
2) whether the information is being sought for a legitimate purpose or for an improper purpose;
3) whether disclosure of the information will cause a party embarrassment;
4) whether confidentiality is being sought over information important to public health and safety;
5) whether the sharing of information among litigants will promote fairness and efficiency;
6) whether a party benefitting from the order of confidentiality is a public entity or official; and
7) whether the case involves issues important to the public.

In re Roman Catholic Archbishop of Portland in Oregon, 661 F.3d 417, 424 n. 5 (9th Cir. 2011) (citing *Glenmede Tr. Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995)).

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[2] Blanket protective orders themselves do not determine good cause for protecting any particular document or information. *Vineyard Investigations v. E. & J. Gallo Winery*, 2024 WL 4882891, at *2 (E.D. Cal. Nov. 25, 2024). Rather, a party may designate a document or material for protection and the opposing party may or may not contest the designation. The party seeking protection must establish good cause for the designation as to a specific document. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003). The Court makes no determination at this time concerning the designation of any particular document or information.

DISCUSSION

On this motion, Plaintiffs request entry of a general protective order governing the disclosure of documents - such as documents containing private medical and personal information of nonparties, including minors, and confidential business records. (Dkt. 78, 85). The parties agree that a general protective order should be entered, but disagree on certain terms. (Dkt. 78, 82, 85).

Plaintiffs propose that the general protective order incorporate regulatory and statutory provisions related to protections for medical and personal information, include an "Attorney Eyes Only" designation, and limit certain discovery and the use of all materials produced during discovery to this litigation. (Dkt. 78, 85). Defendant argues the model protective order for this District is appropriate to address Plaintiffs' concerns, and that Plaintiffs have failed to demonstrate good cause for including the additional requested terms. (Dkt. 82). As discussed below, the Court finds good cause has been shown to enter a general protective order governing the disclosure of documents.

Public disclosure of documents containing sensitive, private medical and personal information of nonparties, especially of the nature involved in this litigation, will result in a particularized harm. *Moore*, 2023 WL 1767391, at *4-5 (discussing cases protecting privacy of nonparty personal information, including medical information, as particularly important because nonparty's conduct is not at issue in the case and listing cases in support). Such documents involve nonparty individuals' highly sensitive, medical and private information concerning reproductive choices, including abortion. There is a

strong privacy interest in the confidentiality of this information, the public disclosure of which will cause nonparties who have not injected themselves in this litigation to be subject to embarrassment, harassment, and retaliation. *See e.g., Planned Parenthood of S. Ariz. v. Lawall*, 307 F.3d 783, 790 (9th Cir. 2002) (recognizing privacy protections for information regarding an abortion decision); *Moore*, 2023 WL 1767391, at * 4-5 (discussing the importance of protecting privacy of nonparties, particularly with sensitive, nonpublic, medical, and potentially embarrassing information).

Balancing the public and private interests using the factors set forth in *In re Roman Catholic Archbishop of Portland*, the Court finds a general protective order under the terms discussed herein is necessary to protect the strong privacy interests of nonparties in their sensitive medical and private information, which outweighs the public interests in such information. In particular, the first and third factors weigh heavily in favor of a protective order. The public disclosure of records containing sensitive information of the nature involved in this case is likely to cause embarrassment and subject nonparties to harassment. As to factors five and seven, the Court finds entry of a general protective order, under the terms described herein, will allow for discoverable information to be exchanged among the parties using appropriate designations so that the important public issues in this case can be litigated, while still protecting the compelling privacy interests of nonparties.

The motion and proposed protective order also include terms relevant to business records, including policies and procedures, proprietary and trade secret information, and

confidential research or development. (Dkt. 78, 78-1). Considering factors one, three, five, and seven, the Court finds there are strong private interests in preserving confidential, proprietary, or trade secret information from public disclosure, that outweighs the public interests. These types of confidential business records are commonly protected during litigation. *Carpenter v. United States*, 484 U.S. 19, 26 (1987) (recognizing corporations' right and benefit to protect its confidential business information); Fed. R. Civ. P. 26(c)(1)(G). The model protective order's provisions concerning such records, with the addition of an Attorney Eyes Only designation as discussed below, are appropriate and necessary at this stage to protect the private interests while still allowing for the information to be shared among litigants. The Court makes no determination at this time as to whether any particular information or records fall within this category of documents, or warrant designation as Confidential or Attorney Eyes Only.

For the reasons stated herein, the Court finds, in its discretion, that good cause has been shown to enter a general protective order under the following terms and conditions.

1. **Other Regulations and Statutes**

Plaintiffs have not demonstrated good cause to include the proposed language of and citations to other regulations and statutes defining or protecting certain materials and information as contained in their proposed protective order. (Dkt. 78-1). If any discoverable materials or information are subject to other regulations or statutes, those provisions apply regardless of any protective order entered in this case. Absent agreement

of the parties, including references to and language from the other provisions in the general protective order, as proposed, would be broader than necessary to address the particularized harms Plaintiffs have established for entering the general protective order in this case. If certain information or material sought in discovery is subject to protection, Plaintiffs' may designate it as such under the relevant terms of the forthcoming general protective order, may object to disclosure of the material, or may otherwise seek to protect the material under the applicable discovery rule, statute, or regulation.

2. Attorney Eyes Only Designation

Plaintiffs have demonstrated good cause to include terms and provisions for an "Attorney Eyes Only" designation in the protective order. On balance, the Court finds the private interests involved here and potential for retaliation, harassment, embarrassment, and disclosure of confidential information, significantly outweigh the public interests in such information. Fed. R. Civ. P. 26(c)(1). As discussed above, the materials and information in this litigation involve nonpublic highly sensitive matters of nonparties and business records, which may warrant protection beyond a Confidential designation. For these reasons, the Court will exercise its discretion and include an Attorney Eyes Only designation in the protective order. *Seattle Times*, 467 U.S. at 36. Again, whether any particular information or documents warrant this designation is not decided here. Rather, the Court finds only that good cause has been shown to include this designation in the protective order in addition to a Confidential designation given the highly sensitive nature of the documents and information involved in this case. That being said, use of the

Attorney Eyes Only designation should be reserved for instances where a designation beyond Confidential is truly justified. The parties are ordered to confer and propose a protective order that includes this designation, using language distinguishing between Confidential and Attorney Eyes Only documents.

3. Limitation on Use and Other Terms

Good cause has been shown to include terms in the protective order governing and limiting the use of certain discovery consistent with the language of the model protective order, including terms restricting the use of materials designated as Confidential and/or Attorney Eyes Only to use in this case only; regarding inadvertent disclosure of materials; and requiring return/destruction of materials following litigation. Fed. R. Civ. P. 26(c)(1). These routine terms provide necessary protections for the sensitive, non-public materials upon which good cause has been found to enter a protective order in this case. Notably, the model protective order includes these terms and Defendant does not object to entry of the model protective order or to any of its terms. (Dkt. 82 at 1).

However, Plaintiff has not shown good cause to include terms in the general protective order precluding the parties from seeking certain discovery and from using, directly or indirectly, all discovery obtained in this case for purposes other than this litigation. Again, discovery is presumed public. *In re Roman Cath. Archbishop of Portland*, 661 F.3d at 424; *San Jose Mercury News*, 187 F.3d at 1103. Plaintiffs' concerns, while understandable and a particularized harm, do not warrant warrant blanket provisions in the general protective order prohibiting discovery on certain matters and

limiting the use of all discovery to only this litigation. In balancing the private and public interests, the Court finds such proposed blanket terms are simply too broad to include in the general protective order given the strong presumption in favor of public access and the important issues in this case. *Id.* Plaintiffs' concerns are more appropriately addressed in the contexts of whether certain discovery requests are relevant and proportional to the needs of the case, whether materials are discoverable, whether materials should be designated as Confidential or Attorney Eyes Only, and the like – as Plaintiffs have done in the separate motion for protective order.

That being said, the model protective order includes the following provision: the "[u]se of any information or documents labeled 'Confidential' and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose." For the reasons stated herein, the Court finds good cause has been shown to include this provision in the general protective order in this case with the modification that the provision also applies to discovery designated as Attorney Eyes Only.

4. Conclusion

Based on the foregoing, the Court finds in its discretion that good cause has been shown to enter a general protective order that includes terms as discussed herein. Fed. R. Civ. P. 26(c)(1). The parties are ordered to confer and make every effort to reach agreement on a joint proposed protective order that is consistent with this ruling. The parties are encouraged to use the model protective order as a starting place, but are not

limited to the model protective order if they reach agreement otherwise. If the parties are unable to agree on a joint protective order, the parties may each submit their own proposed protective order consistent with this ruling, and the Court will consider the same before issuing the final general protective order.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Motion for Entry of a General Protective Order (Dkt. 78) is **GRANTED IN PART AND DENIED IN PART**, as stated herein. No later than **December 19, 2025**, the parties are **ORDERED** to confer and submit a joint proposed general protective order or, if unable to agree, the parties may each submit their own proposed general protective order, which must be consistent with the ruling stated herein.[3]

DATED: December 5, 2025

Honorable Debora K. Grasham
United States Magistrate Judge

[3] The parties may jointly request an extension of this deadline if additional time is needed to confer.

Exhibit 2

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

MOTION FOR ENTRY OF PROTECTIVE ORDER

Plaintiffs Lourdes Matsumoto, Northwest Abortion Access Fund, and Indigenous Idaho Alliance ("Plaintiffs") move the Court for entry of a protective order in the form submitted as **Exhibit A**. Federal Rule of Civil Procedure 26(c)(1) permits a court, upon a showing of good cause, to enter a protective order requiring that certain information be produced only in a specified way.[1] For the reasons set forth below, good cause exists for entry of the proposed protective order.

This case concerns abortion access and travel for reproductive care, issues that carry extraordinary privacy, safety, and reputational concerns. While Plaintiffs have had no responsive documents for the Defendant's initial interrogatories or requests for production, Defendant promulgated new written discovery after business hours on October 28, 2025, knowing that Plaintiffs were going to file this motion. And the discovery deadline is not until January 8, 2026. Due to the sensitive information within certain Plaintiffs' control—including information on policies and practices for assisting abortion patients and information about people who they assist to obtain lawful abortion care—and considering the stigma and violence that can be perpetrated toward those who assist people in fulfilling their reproductive health decisions, a protective order should be entered in this case.[2] Further, Defendant has been laser focused in discovery on seeking to acquire information that by its terms could be used to investigate criminal liability. This is an inappropriate use of the civil process, and the proposed order would prevent the use of documents obtained in this litigation for such purposes.

[1] Plaintiffs are filing two motions for protective orders in this case. This motion is limited to protecting documents and proceeds on the presumption that the second motion—seeking to shield Plaintiffs from disclosing the identities of young people they assist and from responding to discovery aimed at uncovering other potential criminal conduct—will be granted.

[2] *See* Cassie Miller, The Violent History of the Anti-Abortion Movement, Southern Poverty Law Center, June 13, 2024, available at https://www.splcenter.org/resources/reports/violent-history.

Generally, the public is permitted "access to litigation documents and information produced during discovery." *In re Roman Cath. Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011) (citations omitted). However, if good cause exists, a court may "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* (quoting Fed. R. Civ. P. 26(c)(1)). When considering a motion for a non-stipulated protective order, a court proceeds in two steps. *Health Freedom Def. Fund, Inc. v. US Freedom Flyers, Inc.*, No. 4:23-CV-00380-AKB, 2025 WL 1573525, at *6 (D. Idaho June 4, 2025). First, a court must determine if a "particularized harm will result from disclosure of information to the public." *Id.* (quoting *In re Roman Cath. Archbishop*, 661 F.3d at 424); *see also Moore v. Battelle Energy All., LLC*, No. 4:21-CV-00230-CRK, 2023 WL 1767391, at *4 (D. Idaho Feb. 3, 2023) ("party must demonstrate good cause that information to be produced in discovery is confidential or warrants protection"). Second, if such harm will result from disclosure, then the court proceeds to balance "the public and private interests to decide whether [maintaining] a protective order is necessary." *In re Roman Cath. Archbishop*, 661 F.3d at 424 (citation omitted). District courts "have broad discretion to determine whether a protective order is appropriate and, if so, what degree of protection is warranted." *Heitkoetter v. Domm*, No. 1:22-CV-0368-AWI-BAM, 2023 WL 122041, at *5 (E.D. Cal. Jan. 6, 2023) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). Protection of nonparty personal information, including personally identifiable information and health information, is particularly important "because disclosure of sensitive and potentially embarrassing information would cause serious injury to the nonparty, whose conduct is not at issue in the case." *Moore*, 2023 WL 1767391, at *4 (citation omitted).

Here, Plaintiffs seek a protective order to maintain the confidentiality of its business records, which may include sensitive medical and personal information of nonparties to this litigation, i.e., information regarding the care of people seeking abortion. The purpose of the proposed protective order is to provide Defendant access with relevant information while protecting the significant privacy interests of these minors. Defendant apparently agrees that such a protective order is appropriate but does not agree to the scope of such a protective order or whether it precludes use of information acquired in discovery for purposes other than litigation of this case.

Information regarding the medical care of those who have been assisted by Plaintiffs is among the most sensitive kind of personal information—reproductive health care information—for which the individual's privacy interest is significant. Disclosure of personal medical information is well recognized as being particularly harmful. Courts routinely recognize the need for a protective order for medical records. *See e.g., Pizzuto v. Tewalt*, 2024 WL 4417419, at *3-4 (D. Idaho Oct. 4, 2024); *Polk v. Swift,* 339 F.R.D. 189, 196-97 (D. Wyo. 2021); *State Farm Mut. Auto. Ins. Co. v. Kugler*, 840 F. Supp.2d 1323, 1328 (S.D. Fla. 2011). Such information also is routinely protected by federal and state statutes. *See, e.g.*, RCW 7.115.020(1)("It is the public policy of Washington to protect the provision of protected health care services that are lawful in the state of Washington by a person duly licensed under the laws of the state of Washington . . . regardless of the location of the person receiving the services."); RCW 7.115.020(2) ("A law of another state that authorizes the imposition of civil or criminal liability related to the provision, receipt, attempted provision or receipt, assistance in the provision or receipt or attempted assistance in the provision or receipt of protected health care services that are lawful in the state of Washington is against the public policy of this state."); ORS 192.553(1) ("It is the policy of

the State of Oregon that an individual has . . . the right to have protected health information of the individual safeguarded from unlawful use or disclosure."); Idaho Admin. Code r. 16.03.14.360.05 ("No release of medical information shall be made without written consent of the patient or by official court order except to legally authorized entities such as third party payors, peer review organizations, licensing agency, etc."). Plaintiffs' form of protective order specifically recognizes the importance of medical record privacy and identifies them as bases for designating such material as confidential or Attorney Eyes Only. The District of Idaho model protective order does not provide such specific guidance and does not include a designation of Attorney Eyes Only.

Moreover, such extra protection is warranted here, where the documents in certain Plaintiffs' possession may also relate to minors. Recognizing that public disclosure of sensitive information regarding juveniles is particularly harmful since it could follow them their entire lives, juvenile records generally are afforded extra protection under Idaho state law. Juvenile criminal records are exempt from disclosure under the Idaho Public Records Act. Similarly, Idaho juvenile criminal records and proceedings are closed to the public. Idaho Code § 74-105(2),(3). I.J.R. 52(a),(c). For the reasons set forth in Plaintiffs' second motion for protective order, the identity of any person whom Plaintiffs have assisted in obtaining abortion care should under no circumstances be disclosed. Moreover, to the extent any records contain medical information concerning a minor whom Plaintiffs have helped, that information should be designated Attorney Eyes Only, even if all identifying details are redacted.

Plaintiffs further seek a protective order to ensure that material produced in discovery is not used for purposes other than the litigation in this case, i.e., to investigate or prosecute persons for violation of 18 U.S.C. § 623 or other criminal statutes. Until recently, the use of reproductive

health information specifically was afforded extra protection by federal regulation. 45 C.F.R. § 164.502(a)(5)(iii) (prohibiting a covered health care entity from disclosing protected health information potentially related to reproductive health care information if the information will be used to conduct a criminal, civil or administrative investigation of any person for the mere act of seeking, obtaining, providing or facilitating reproductive health care). Such protection should nonetheless be applicable here because Defendant is not a health oversight agency and does not play a role in ensuring that health care was properly provided. *See U.S. ex rel. Kaplan v. Metropolitan Ambulance & First-Aid Corp.*, 395 F. Supp.2d 1 (2005) (rejecting a protective order that would have restricted the government's use of confidential patient records solely to the litigation, recognizing the federal government's broader role as a health oversight agency). Moreover, the at-issue health care—an abortion—would have been provided in a different state, where Defendant has no jurisdiction. Finally, because Defendant's interrogatories, directly ask Plaintiffs if they have violated criminal statutes—and Plaintiffs anticipate Defendant will attempt to directly ask those questions again in depositions—it is critical that Defendant not be able to use discovery directly or indirectly to pursue would-be criminal prosecutions. For that reason, the second protective order motion will seek to prohibit such direct questioning in depositions. However, protections are also necessary to prevent the use of indirect evidence obtained in this case for the same impermissible purposes.

Two provisions of the proposed protective order achieve these objectives. First, the end of the first numbered section, titled "Purposes and Limitations" provides that "Notwithstanding the foregoing, all information produced or disclosed in the above captioned action shall be used solely for the prosecution or defense (including any appeal) of this action and shall not be used for any other purpose." Second, the section titled "Seeking Medical Records" provides that "the

parties agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes." This latter provision is particularly important where here, the parties dispute the scope and meaning of Idaho Code §18-623 and Plaintiffs simply seek assurances that they will not be prosecuted for the mere act of bringing their constitutional challenge.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter the protective order attached as **Exhibit A**.

DATED: October 29, 2025.

STOEL RIVES LLP

/s/ Wendy J. Olson
Wendy J. Olson

LEGAL VOICE

/s/ Wendy S. Heipt
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 29, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Exhibit 3

Exhibit A

Exhibit A

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

PROTECTIVE ORDER

Plaintiffs anticipate the possibility of production of documents or information that at least one party or a third-party from whom documents have been or will be subpoenaed, considers to be, or to contain, confidential, proprietary, trade secret, or commercially or personally sensitive information, including but not limited to medical records and personally identifying information for individuals not a party to this lawsuit, and that may be appropriately subject to protection under Federal Rule of Civil Procedure 26(c), the Health Insurance Portability and Accountability Act and its implementing regulations, 45 C.F.R. § 164.512(e)(l), Idaho Code § 9-203(9), the Washington State shield law, RCW 7.115.020, and the Oregon State shield law, ORS 109.640.

Good cause exists to protect the confidential nature of the information contained in certain documents, interrogatory responses, responses to requests for admission, or deposition testimony. The Protective Order is warranted to protect against disclosure of such documents and information.

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. PURPOSES AND LIMITATIONS

This Protective Order does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

This Protective Order applies to discovery, pre-trial, trial, and post-trial proceedings in this action, whether the Documents are produced by a party or a person or entity who is not a party to this Action (a "non-party"). It also binds the Parties and their respective agents, successors, personal representatives, and assignees. However, this Protective Order does not govern the use by the Parties of Protected Material ("Confidential" or Attorney Eyes Only" material) in open court at any hearing or trial, but the Parties reserve the right to seek relief from the Court in connection with the intended use of Protected Material in any such hearing or trial. Notwithstanding the foregoing, all information produced or disclosed in the above captioned action shall be used solely for the prosecution or defense (including any appeal) of this action and shall not be used for any other purpose.

2. "CONFIDENTIAL" AND "ATTORNEY EYES ONLY" MATERIAL

"Confidential" material shall include the following documents and tangible things (regardless of how generated, stored, or maintained) produced or otherwise exchanged which contain: (1) "protected health information," which shall have the same scope and definition as set forth in 45 C.F.R. §§ 160.103 and 164.501[1]; (2) documents discussing treatments and/or health care; (3) information protected by the provisions of the Privacy Act of 1974, 5 U.S.C § 552a; (4) information protected by the Internal Revenue Code, 26 U.S.C. § 6103; (5) proprietary information; (6) trade secret information; (7) confidential research or development; (8) financial information that is commercially sensitive or that otherwise is entitled to protective treatment under Federal Rule of Civil Procedure 26(c); (9) information subject to non-disclosure or other confidentiality agreements, whether between the parties or with third parties; and (10) personal information that is protected from disclosure by other statute, regulation, or otherwise entitled to protection from public disclosure. Such confidential and/or proprietary information shall be referred to herein as "Confidential."

"Attorney Eyes Only" materials shall include documents and tangible things (regardless of how generated, stored, or maintained) that qualify as "Confidential" and that the designating party reasonably believes contain highly sensitive business or personal information, the disclosure of which to another party or non-party would create a risk of competitive or commercial disadvantage, or highly sensitive personal disadvantage, to the designating party, or a person for whom the designating party provides personal services, that could not be avoided by less restrictive means. Such information and materials shall be referred to herein as "Attorney Eyes Only."

It is the parties' intent that material will not be designated "Confidential" or "Attorney Eyes Only" without a good faith belief that it has been maintained in a confidential, non-public manner, there is good

[1] Protected health information includes, but is not limited to, health information, including demographic information relating to either: (a) the past, present, or future physical or mental condition of an individual; (b) the provision of care to an individual; or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

cause why it should not be part of the public record in this case, and, with respect to "Attorney Eyes Only" materials, there is a significant risk of competitive or commercial disadvantage or highly sensitive personal disadvantage to the designating party, or a person for whom the designating party provides personal services, if such materials are disclosed to another party or non-party.

The parties agree that third parties from whom documents are subpoenaed may also designate materials as "Confidential" or "Attorney Eyes Only" and the parties will observe those designations consistent with all terms of this Protective Order.

3. SCOPE

The protections conferred by this Protective Order cover not only Confidential and Attorney Eyes Only material (as defined above), but also (1) any information copied or extracted from Confidential or Attorney Eyes Only material; (2) all copies, excerpts, summaries, or compilations of Confidential or Attorney Eyes Only material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential or Attorney Eyes Only material.

The parties are authorized to produce personally identifying information contained within electronically stored information or hard copy documents. Any electronically stored information or hard copy documents containing such personally identifying information will be deemed Confidential Information, regardless of whether the electronically stored information or hard copy documents are marked with a "Confidential" legend designating the information as Confidential Information. The parties may further designate this information as Attorney Eyes Only information if appropriate under the definition set forth above.

4. ACCESS TO AND USE OF CONFIDENTIAL AND ATTORNEY EYES ONLY MATERIAL

4.1 Basic Principles. A receiving party may use Confidential or Attorney Eyes Only material that is disclosed or produced by another party or by a non-party in connection with this case solely for purposes of prosecuting, defending, or attempting to settle this litigation. Confidential and Attorney Eyes Only material may be disclosed only to the categories of persons and under the conditions described in

this Protective Order. Prior to disclosing Confidential or Attorney Eyes Only material to the categories of persons and under the conditions described in this Protective Order, counsel shall inform each such person that Confidential and Attorney Eyes Only material may not be used or disclosed for any purpose other than this litigation and provide a copy of this Protective Order, and for certain categories of persons, must ensure they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), as stated below. Counsel shall take all other reasonable steps to ensure that persons receiving Confidential and Attorney Eyes Only material and health information do not use or disclose such information for any purpose other than this litigation. Confidential and Attorney Eyes Only material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Protective Order.

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving party may disclose any Confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in-house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound";

(d) the Court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of Confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any Confidential material to third parties and to immediately return all originals and copies of any Confidential material;

(f) witnesses in the action to whom disclosure is reasonably necessary, including during their

depositions, and who have signed the "Acknowledgment and Agreement to Be Bound," unless otherwise agreed by the designating party or ordered by the Court;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(h) mediators and arbitrators.

Pages of transcribed deposition testimony or exhibits to depositions that reveal Confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

4.3 Disclosure of Attorney Eyes Only Information or Items. Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving party may only disclose Attorney Eyes Only material to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) in-house counsel of the receiving party to whom disclosure is reasonably necessary for this litigation;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound";

(d) the Court, court personnel, and court reporters and their staff once appropriate measures have been taken for protection of the information;

(e) copy or imaging services retained by counsel to assist in the duplication of Attorney Eyes Only material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any Attorney Eyes Only material to third parties and to immediately return all originals and copies of any Attorney Eyes Only material;

(f) witnesses in the action to whom disclosure is reasonably necessary, including during their depositions, and who have signed the "Acknowledgment and Agreement to Be Bound," unless otherwise agreed by the designating party or ordered by the Court: and

(g) the author or recipient of a document containing the information.. Pages of transcribed deposition testimony or exhibits to depositions that reveal Attorney Eyes Only material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement.

4.4 Filing Confidential or Attorney Eyes Only Material. Before filing Confidential or Attorney Eyes Only material or discussing or referencing such material in court filings, the filing party shall provide advance notice to the designating party. Any Confidential or Attorney Eyes Only information, or any document incorporating Confidential or Attorney Eyes Only information, that is filed with the Court shall be filed in accordance with the Court's CM/ECF procedures and shall be filed provisionally under seal according to District of Idaho Local Civil Rule 5.3(b). The designating party shall have the burden and responsibility of filing a motion to seal with the Court under Local Civil Rule 5.3 to determine whether or not the record designated as Confidential or Attorney Eyes Only will in fact be sealed or redacted. "Compelling reasons," as set forth in *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006), must be shown to seal records attached to a dispositive motion, and "good cause" must be shown to seal records attached to a non-dispositive motion.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written

communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Protective Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Protective Order (*see, e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this Protective Order must be clearly so designated before or when the material is disclosed or produced.

(a) Information in Documentary Form. To designate information in documentary form (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings) for protection under this agreement, the designating party must affix the word "CONFIDENTIAL" or "ATTORNEY EYES ONLY" to each page that contains Confidential or Attorney Eyes Only material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) by making appropriate markings in the margins and, if desired, by separately addressing in an appendix which parts are protected.

(b) Testimony Given in Deposition or in Other Pretrial Proceedings. To designate testimony given in a deposition or in other pretrial proceedings for protection under this agreement, any party may, within thirty days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Confidential or Attorney

Eyes Only. If a party desires to protect Confidential or Attorney Eyes Only information at trial, the issue should be addressed during the pre-trial conference. Unless otherwise agreed, all deposition transcripts shall be treated as "CONFIDENTIAL" until the expiration of the thirty-day period.

(c) Other Tangible Items. To designate other tangible items for protection under this agreement, the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL" or "ATTORNEY EYES ONLY." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this Protective Order for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this Protective Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party may challenge a designation of Confidential or Attorney Eyes Only at any time up until and including sixty (60) days prior to trial. Unless a prompt challenge to a designating party's Confidential or Attorney Eyes Only designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge the designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute regarding Confidential or Attorney Eyes Only designations without Court involvement. Any motion regarding Confidential or Attorney Eyes Only designations, or for a protective order, must

include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court intervention, the designating party may file and serve a motion to retain the Confidentiality or Attorney Eyes Only designation. The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as Confidential or Attorney Eyes Only until the Court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

7.1 If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "ATTORNEY EYES ONLY," that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential or Attorney Eyes Only material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential or Attorney Eyes Only material to any person or in any circumstance not authorized under this Protective Order, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or order that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) and absent any order, to be bound by the non-waiver terms of Fed. R. Evid. 502(d).

10. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all Confidential and Attorney Eyes Only material to the producing party, including all copies, extracts, and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the Court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential or Attorney Eyes Only material.

11. SEEKING OF MEDICAL RECORDS

Nothing in this Protective Order authorizes counsel for Plaintiffs or the Defendant to obtain medical records or information through means other than formal discovery requests, subpoenas,

depositions, or pursuant to a patient authorization. Moreover, the parties agree that they will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.

12. NO WAIVER OF OBJECTIONS

This Protective Order shall not constitute a waiver of any party's or non-party's right to oppose any discovery request or object to the admissibility of any document, testimony, or other information.

13. MODIFICATION

Nothing in this Protective Order shall prejudice any party from seeking amendments to expand or restrict the rights of access to, and use of, Protected Material, or other modifications, subject to order by the Court.

14. SURVIVAL

The restrictions on disclosure and use of Protected Material shall survive the conclusion of this action, and the confidentiality obligations imposed by this Protective Order shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

The Court has reviewed the reasons offered in support of entry of this Protective Order and finds that there is good cause to protect the confidential nature of certain information. Accordingly, the Court adopts the above Protective Order in this action.

IT IS SO ORDERED.

DATED: _____

_____
Honorable Debora K. Grasham

EXHIBIT A

I, _____, have been advised by counsel of record for

_____ in _____

of the protective order governing the delivery, publication, and disclosure of confidential documents and information produced in this litigation. I have read a copy of the protective order and agree to abide by its terms.

_____
Signed

_____
Printed

_____
Date

Exhibit 4

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as the Attorney General of the State of Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

RESPONSE TO MOTION FOR PROTECTIVE ORDER [DKT. 78]

INTRODUCTION

The Attorney General is not opposed to the entry of the District of Idaho's Model Protective Order in this case, and has informed Plaintiffs' counsel of that fact on several occasions. Notwithstanding that months-old, and oft repeated, concession, Plaintiffs insist on including provisions in the protective order that are unreasonable, unduly burdensome for the Defendant, and unnecessary. Plaintiffs' argument in support of a protective order is primarily based on the red herring that medical information ought to be protected. But nobody is arguing that it shouldn't be—that's why Defendant's undersigned counsel has stated, no less than five times, that the District of Idaho Model Protective Order is acceptable and should be entered in this case.

But Plaintiffs' counsel has instead insisted upon including vacated federal regulations and non-applicable statutes from other states. This effort to include vacated regulations and non-applicable state protections in a federal case should be rejected. Plaintiffs are not, as they argue, seeking just a protective order over medical information. If they were, Defendants' months old agreement to enter the District of Idaho Model Protective Order should have mooted the point—obviously, Rule 26(c) covers medical records too. Instead, Plaintiffs are simply attempting to insert a vacated federal regulation and various state statutes that have zero relevance to federal discovery, and to suggest that the Court, by way of Protective Order, has the authorization to provide sweeping judicial immunity going to any information obtained in this case. The Court lacks the power to grant sweeping criminal immunity through a backdoor. The Court should only grant relief in part, by entering the District of Idaho Model Protective Order.

BACKGROUND

The parties have negotiated fruitlessly for a protective order for two months. Defendant, on no less than five occasions, offered to stipulate to the District of Idaho Model Protective Order. Plaintiffs disagreed and offered their own order. Defendant responded by asking Plaintiffs to justify

the departures from the Model Order, since, if Plaintiffs moved for such an order, they would have the burden to show why the order was necessary. Plaintiffs failed to justify the departures, other than to say that the changes were important to them. Defendant remains willing to stipulate to the Model Protective Order.

LEGAL STANDARD

The law presumes that materials produced in pre-trial discovery are public. *San Jose Mercury News, Inc. v. U.S. Dist. Ct.-N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). Rule 26(c) allows a court to override this general presumption with the entry of a protective order upon a showing of "good cause." Importantly, Plaintiffs bear the burden of asserting good cause for each document they seek to protect by way of protective order, including "showing that specific prejudice or harm will result if no protective order is granted." *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003). The same is similarly true for discovery related to non-parties; any "person" under Rule 26(c), must meet this burden. *In re Roman Catholic Archbishop of Portland in Ore.*, 661 F.3d 417, 426 (9th Cir. 2011). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (quoting *Cipollone v. Ligget Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)).

Importantly, "[t]he mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records." *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). "Nor is it a sufficiently 'compelling reason' that a party designated information as

confidential pursuant to a protective order." *TML Recovery, LLC v. Cigna Corp.*, 714 F.Supp.3d 1214, 1218 (C.D. Cal. 2024) (collecting cases).[1]

ARGUMENT

Plaintiffs' arguments about specific provisions can be divided into two buckets: 1) those provisions or issues that the Model Protective Order already covers and therefore do not provide good cause for departing from the model order; and 2) those that Plaintiff does not show good cause for.

I. The Model Protective Order already provides most of the protections that Plaintiffs seek.

Several issues raised in the motion are dealt with by virtue of the Model Protective Order already including appropriate language.

The first is the need to designate "sensitive medical and personal information of nonparties to this litigation" as confidential. There is nothing in the District of Idaho Model Protective Order that prohibits the designation of such information as confidential, indeed "sensitive personal information"—a category more broad than simple medical records—is expressly contemplated by the order. Parties routinely designate such material as confidential, and regardless of what the Protective Order says about the material it is intended to cover, the only standard that matters in determining whether a designation is appropriate remains the same regardless of the express inclusion of particular language in the protective order. *Archbishop of Portland*, 661 F.3d at 424–25 (citing factors in *Glenmede Tr. Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995)). Put differently, whether the Model Protective Order contains specific language about medical

[1] To be sure, the compelling reasons test for seal and the good cause requirement under Rule 26(c) are distinct. *See Kamakana*, 447 F.3d at 1180. But it stands to reason that if incrimination is not sufficient to satisfy the more stringent compelling reasons test, it is not sufficient to satisfy the good cause standard either.

procedures is irrelevant to the protection the Order gives to any given document. A party challenging the designation is going to need to satisfy the same factors and overcome the same burden. Accordingly, there is no good cause for departing from the Model Order and using different language.

For the same reason, Plaintiffs have failed to show good cause for including references to various State statutes and a vacated federal regulation (*see* Dkt. 78 at 4–5 and Dkt. 78-1 at 3 (incorporating statutes and regulations) and 12–13 (incorporating protection from vacated regulation)). Those statutes do not apply to federal courts and offer no more protection against disclosure than Rule 26(c) provides. Plaintiffs do not argue in their motion as to why the state statutory language should be included. The only support that Plaintiff has for the proposition that a now-vacated regulation should, *despite being vacated* for being unauthorized, govern discovery is a district court case *denying* a protective order. *See* Dkt. 78 at 6 (citing *U.S. ex rel. Kaplan v. Metropolitan Ambulance and First-Aid Corp.*, 395 F.Supp.2d 1 (2005); *and compare* Dkt. 78 at 6 with *Purl v. U.S. Dep't of Health and Human Servs.*, 787 F.Supp.3d 284 (N.D. Tex. 2025). That does not constitute good cause.

The second issue relates to the apparent need to prevent the use of discovery material in this case from being used in other proceedings. Plaintiffs' perfunctory assertions on this are unfounded and unsupported, but in any event, the Model Protective Order expressly provides in Paragraph 1, "[u]se of any information or documents labeled 'Confidential' and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose." . If the information at issue is personal medical information (or otherwise properly designated as confidential under

Rule 26(c)), then the Model Protective Order not only offers protection, *see supra*, but would also prohibit its use for any other purpose.

To be sure, Plaintiffs suggest that a further use of the protective order is warranted, adding a broader protection related to *any* discovery, whether or not designated as confidential. Specifically, they are asking the Court to impose language that the parties "will not seek information or use information obtained through discovery in this case to investigate or impose liability on any person for seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes." Dkt. 78-2 at 13. Thus, they are asking the Court to specifically include protections from the vacated federal regulation. *Compare* Dkt. 78-1 ¶ 11 with 45 C.F.R. § 164.520(b)(1) (vacated by *Purl*, 787 F.Supp.3d 284). They do so, seeking "assurance[] that they will not be prosecuted for the mere act of bringing their constitutional challenge." Dkt. 78 at 7; Dkt. 78-1 ¶ 11. This fails to supply good cause for any modification of the Model Protective Order for two reasons.

First, the framing is incorrect—there is no criminal cause of action associated with simply bringing a constitutional challenge, and Plaintiffs have not identified one. If Plaintiffs prevail, and prove that the challenged statute is unconstitutional, then they cannot be prosecuted for any alleged violation of a statute that the Court finds to be unconstitutional. And if they fail, they are entitled to no protection at any rate.

Second, the Court lacks the inherent power to grant criminal immunity, let alone do so by protective order. *United States v. Westerdahl*, 945 F.2d 1083, 1086 (9th Cir. 1991) ("A criminal defendant is not entitled to compel the government to grant immunity to a witness."). Moreover, despite stating that the use of information gained in civil discovery for a criminal prosecution would be "impermissible" Plaintiffs cite *zero* authority for that proposition. Dkt. 78 at 6.

Consequently, a protective order that effectively provides immunity to Plaintiffs or witnesses for criminal actions uncovered in civil discovery by precluding its use in other cases regardless of context, is not authorized. Dkt. 78-1 ¶ 11; *see also cf. Fierro Cordero v. Stemilt AG Servs., LLC*, 142 F.4th 1201, 1207 (9th Cir. 2025) (noting 9th Circuit's favor of access to discovery materials for individuals "engaged in other litigation because allowing the fruits of one litigation to facilitate preparation in other cases advances the interests of judicial economy by avoiding the wasteful duplication of discovery.").

* * *

Because Plaintiffs have not explained why the Model Protective Order's language is insufficient to protect any legitimate interests, Plaintiffs have not established good cause for entry of their preferred protective order. To the extent that Plaintiffs desire a Protective Order to avoid incriminating themselves, that is neither within the Court's power to provide (*Westerdahl*, *supra*), nor an appropriate use of Rule 26. *Kamakana*, 447 F.3d at 1179.

II. Plaintiffs do not identify good cause for an AEO provision.

A further addition of substance that gets scant mention in the motion is the proposed protective order's inclusion of an attorneys' eyes-only provision. Plaintiffs do not explain why an AEO provision is necessary in addition to the protections already afforded under a confidentiality designation. There simply is no explanation as to why the latter is inadequate, no consideration of the contrasting provisions, and no legal support for an AEO designation. *See generally*, Dkt. 78 at 5. Indeed, given the Defendant in this case, and the lack of explanation as to who the AEO provision is supposed to keep documents from, it is unclear as to what additional protections an AEO designation would provide over and above a standard confidentiality designation. Plaintiffs have not shown good cause for the additional burdensome step of adding an AEO designation to the protective order. *Beckman*, 966 F.2d at 476.

III. Plaintiffs do not identify good cause for the remaining additions.

Plaintiffs' proposed protective order contains additions related to the notification of other parties if a subpoena for confidential or AEO information is received, inadvertent production, and changes to Model Protective Order provisions related to non-termination and return of documents. Plaintiffs do not address these provisions in their motion at all. *See generally* Dkt. 78. Consequently, Plaintiffs have failed to show good cause for their inclusion. *See* Dkt. 78-1 at ¶¶ 7–10.

CONCLUSION

For the foregoing reasons, the Court should grant in part the motion for protective order, entering only the District of Idaho Model Protective Order, and rejecting Plaintiffs' request to deviate from that model order.

DATED: November 4, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ *Aaron M. Green*
AARON M. GREEN
Deputy Attorney General
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on November 4, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Exhibit 5

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR ENTRY OF PROTECTIVE ORDER (DOCUMENTS)

Plaintiffs Lourdes Matsumoto, Northwest Abortion Access Fund, and Indigenous Idaho Alliance ("Plaintiffs") submit this reply in support of their Motion for Entry of Protective Order. Defendant acknowledges that a protective order is appropriate here, but despite having asked for sensitive information about third parties and despite repeatedly asking in discovery requests whether Plaintiffs have committed other, unrelated crimes, he argues that the model protective order is enough and insists that only its provisions are necessary. (Dkt. 82). He contends that it provides sufficient protection for any medical records and that an "Attorney Eyes Only" designation is not necessary. But it is apparent from Defendant's opposition here and to Plaintiffs' separate motion for a protective order regarding minors' identities (Dkt. 83), that the Defendant intends to use the discovery process as a criminal fishing expedition to retaliate against Plaintiffs for seeking to vindicate their constitutional rights. The protective order submitted by Plaintiffs is therefore appropriate.

ARGUMENT

This Court has broad discretion to determine whether a protective order is appropriate and, if so, what degree of protection is warranted. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) ("Broad discretion is vested in the trial court to permit or deny discovery, and its decision to deny discovery will not be disturbed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant."). Here, the Plaintiffs have proposed a Protective Order that provides clear protection for sensitive medical and personal information, allows extra protection in the form of an "Attorney Eyes Only" designation for material that is highly sensitive. Among the information Defendant seeks in discovery are records from Plaintiffs IIA and NWAAF regarding minors whom they have assisted in obtaining reproductive

health care. Their interrogatories also directly ask whether Plaintiffs have violated criminal statutes. Certainly, both categories of information are highly sensitive, and information related to services provided to minors directly implicates the privacy rights of third parties. On this facial challenge to Idaho Code § 18-623, protection of this highly sensitive material in the manner set out in Plaintiffs' proposed Protective Order is warranted.

A. Non-party and Reproductive Health Information Warrants Significant Protection in Discovery.

It is routine for a party to a case to seek protection of information related to non-parties, *see Cabell v. Zorro Prods., Inc.*, 294 F.R.D. 604, 607 (W.D. Wash. 2013) ("Fed. R. Civ. P. 26(c)(1) permits a party to seek a protective order from the presiding court in order to restrict the party seeking discovery from pursuing certain requests on third parties.") And neither party can waive the privacy interests of the third-parties whose records Defendant seeks and Plaintiffs seek to protect. *See Beebe v. Andrews*, No. 1:21-CV-00012-SLG, 2022 WL 621782, at *2 (D. Alaska Mar. 3, 2022). It is undisputed that here, the discovery Defendant seeks relates to nonparties to the litigation, many of whom have sought Plaintiffs' assistance precisely because they understand that Plaintiffs will keep such information confidential. Plaintiffs have filed this lawsuit precisely to be able to continue serving and associating in solidarity with young Idahoans to help them access lawful medical care. Only the Protective Order sought by Plaintiffs is sufficient to protect against disclosure of these third-party interests.

In addition, until recently, reproductive health information was afforded extra protection by federal regulation. 45 C.F.R. § 164.502(a)(5)(iii) (prohibiting a covered health care entity from disclosing protected health information potentially related to reproductive health care if the information will be used to conduct a criminal, civil or administrative investigation of any person for the mere act of, inter alia, providing or facilitating reproductive health care). This regulation

was declared invalid in *Purl v. HHS*, 787 F.Supp.3d 284 (N.D. Tex. June 18, 2025), not because its premise was flawed, but because the court determined that HHS acted in excess of its statutory jurisdiction when promulgating the regulation. *Id.* at 306.

This Court should order such protection here because of the important privacy interests at stake and because it is necessary to prevent the use of indirect evidence obtained in this case for impermissible purposes. Although the Defendant argues that this Court cannot confer immunity on Plaintiffs for criminal conduct, Plaintiffs' proposed Protective Order does not seek such immunity. Plainly, if the Defendant were to obtain evidence that it decided to use to seek criminal prosecution of Plaintiffs through some other source, Defendant could take whatever action he deems appropriate. Plaintiffs' proposed Protective Order simply observes the principle that a civil case cannot be used to further a criminal investigation, *See, e.g.*, *United States v. Heine*, 314 F.R.D. 498, 509 (D. Or. 2016) (the State generally cannot use civil discovery to build a criminal case); *see also United States v. Kordel*, 397 U.S. 1, 11-13 (1970) (suggesting that the government may act in bad faith if it brings a civil action solely for the purpose of obtaining evidence in a criminal prosecution).

And the case Defendant cites, *United States v. Westerdahl*, 945 F.2d 1083, 1086 (9th Cir. 1991), for the proposition that this Court cannot grant immunity has nothing to do with protective orders or civil discovery. Rather, it addresses whether a defendant was denied a fair trial because the government granted use immunity to one witness, who favored the government's case, and not to a second witness, who favored the defendant's case. *Id.* And although it contains the parenthetical cited by the Defendant, "A criminal defendant is not entitled to compel the government to grant immunity to a witness" (*id.* (quoting *United States v. Shirley*, 884 F.2d 1130, 1133 (9th Cir. 1989)), it also points out that the Ninth Circuit has

"recognized an exception to this rule in cases where the fact-finding process is intentionally distorted by prosecutorial misconduct, and the defendant is thereby denied a fair trial. *United States v. Lord*, 711 F.2d 887, 892 (9th Cir. 1983)." *Westerdahl*, 945 F.2d at 1086. In short, *Westerdahl* provides no guidance to the Court here.

B. An "Attorney Eyes Only" Designation is Appropriate to Include in the Protective Order.

Defendant objects to Plaintiffs' including an "Attorney Eyes Only" provision, suggesting there is no one to protect it from. Dkt. 82 at 6. As set out in the Plaintiffs' proposed Protective Order,

> "'Attorney Eyes Only' materials shall include documents and tangible things (regardless of how generated, stored, or maintained) that qualify as "Confidential" and that the designating party reasonably believes contain highly sensitive business or personal information, the disclosure of which to another party or non-party would create a risk of competitive or commercial disadvantage, or highly sensitive personal disadvantage, to the designating party, or a person for whom the designating party provides personal services, that could not be avoided by less restrictive means. Such information and materials shall be referred to herein as "Attorney Eyes Only."

Dkt. 78-1, § 2. Thus, Plaintiffs seek to provide extra protection to individuals' sensitive personal information related to their reproductive health choices. Such information is undoubtedly highly sensitive, warranting an "Attorney Eyes Only" designation. *See Planned Parenthood of S. Arizona v. Lawall*, 307 F.3d 783, 790 (9th Cir. 2002) (acknowledging that disclosure of sensitive, private information involving a young person's decision to obtain an abortion would cause significant harm); *Women's Med. Ctr. of Nw. Houston v. Bell*, 248 F.3d 411, 422 (5th Cir. 2001) (stating that abortion "has been a traditional target of hostility"); *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1330, 1334 (M.D. Ala.) ("Against the backdrop of this history of violence, abortion providers and women seeking abortions in Alabama today live and work in a climate of extreme hostility to the practice of abortion."), *as corrected* (Oct. 24, 2014),

supplemented, 33 F. Supp. 3d 1381 (M.D. Ala. 2014), and *amended*, No. 2:13CV405-MHT, 2014 WL 5426891 (M.D. Ala. Oct. 24, 2014). Defendant apparently does not plan to show any discovery to anyone who is not an attorney, so the "Attorney Eyes Only" designation should not impose any burden on Defendant.

CONCLUSION

For the reasons set forth above and in Plaintiffs' Motion for Entry of a Protective Order, this Court should enter the Protective Order set out in Exhibit 1 to that motion, Dkt. 78-1.

DATED: November 10, 2025.

STOEL RIVES LLP

/s/ Wendy J. Olson
Wendy J. Olson

LEGAL VOICE

/s/ Wendy S. Heipt
Wendy S. Heipt
Kelly O'Neill

THE LAWYERING PROJECT

/s/ Jamila A. Johnson
Jamila A. Johnson
Paige Suelzle

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 10, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Aaron M. Green
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Brian V. Church
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/s/ *Wendy J. Olson*
Wendy J. Olson

Exhibit 6

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO et al., Plaintiffs, v. RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho, Defendant.	Case No. 1:23-cv-00323-DKG **STIPULATED PROTECTIVE ORDER**

One or more of the parties in this matter anticipates the production of documents or information that at least one party considers to be, or to contain, confidential, proprietary, trade secret, or commercially or personally sensitive information, and that may be appropriately subject to protection under Federal Rule of Civil Procedure 26(c).

The parties agree that good cause exists to protect the confidential nature of the information contained in certain documents, interrogatory responses, responses to requests for admission, or deposition testimony. The parties agree that the entry of this Stipulated Protective Order ("Protective Order") is warranted to protect against disclosure of such documents and information.

Based upon the above stipulation of the parties, and the Court being duly advised, IT IS HEREBY ORDERED as follows:

Use of any information or documents labeled "Confidential" or "Attorney Eyes Only" and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for

any other purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this litigation.

1. The Parties acknowledge that this Protective Order does not confer blanket protections on all disclosures during discovery or in the course of making initial or supplemental disclosures under Rule 26(a). Designations under this Protective Order shall be made with care and shall not be made absent a good faith belief that the designated material satisfies the criteria set forth below. The Designating Party shall consider whether appropriate redactions can address the need for confidentiality in lieu of designating a document as confidential or attorney eyes only. If it comes to the attention of any party or non-party that discloses or produces any discovery material that designated material does not qualify for protection at all or does not qualify for the level of protection initially asserted, the designating party must promptly notify all other parties that it is withdrawing or changing the designation.

2. The parties, and third parties subpoenaed by one of the parties, may designate as "Confidential" documents, testimony, written responses, or other materials produced in this case if they contain information that the producing party has a good faith basis for asserting is confidential under the applicable legal standards. The party shall designate each page of the document with a stamp identifying it as "Confidential," if practical to do so. Within thirty (30) days after receipt of the final transcript of the deposition of any party or witness in this case, a party or the witness may designate as "Confidential" any portion of the transcript that the party or witness contends discloses confidential information. Unless otherwise agreed, all deposition transcripts shall be treated as "Confidential" until the expiration of the thirty-day period.

3. Attorney Eyes Only materials shall include documents and tangible things (regardless of how generated, stored, or maintained) that qualify as "Confidential" and that the designating party reasonably believes contain highly sensitive business or personal information, the disclosure of which to another party or non-party would create a risk of competitive or commercial disadvantage, or highly sensitive personal disadvantage, to the designating party, or a person for whom the designating party provides personal services, that could not be avoided by less restrictive means. Such information and materials shall be referred to herein as "Attorney Eyes Only."

4. If portions of documents or other materials deemed "Confidential," or "Attorney Eyes Only" or any papers containing or making reference to confidential portions of such materials are filed with the Court, they shall be filed under seal and marked according to the provisions of District of Idaho Local Civil Rule 5.3. The parties acknowledge that this Protective Order may not entitle them to permanently seal all documents or information marked "Confidential" or "Attorney Eyes Only" filed with the Court.

5. In seeking to file a document under seal, the parties understand there is a strong presumption in the Ninth Circuit in favor of access to court records and that sealing a document from public view is the exception. In addition, the parties understand that the Court will evaluate any motion to seal under the standards set forth in *Ctr. for Auto Safety v. Chrysler Group*, LLC, 809 F.3d 1092, 1096-98 (9th Cir. 2016) (holding the "compelling reason" standard applies to sealing matters that are "more than tangentially related to the merits of a case" whether dispositive or non-dispositive, and that all other situations warrant "good cause"). The designating party bears the burden to establish the facts necessary to seal such information or documents.

6. If the designating party is filing with the Court documents or information that it marked "Confidential," or "Attorney Eyes Only" it shall file a motion to seal pursuant

to District of Idaho Local Civil Rule 5.3 that sets forth the specific facts necessary to justify the sealing of the documents or information. If the non-designating party is filing with the Court documents or information marked "Confidential" or "Attorney Eyes Only" by another party, the non-designating party shall file a motion to seal pursuant to District of Idaho Local Civil Rule 5.3 explaining that it is not the party that designated the documents or information as "Confidential" or "Attorney Eyes Only" and either: (a) setting forth its understanding as to why the documents or information have been designated "Confidential" or "Attorney Eyes Only" by another party, or (b) specifically objecting to the documents or information being designated as "Confidential" or "Attorney Eyes Only" by another party and/or maintained under seal by the Court. If the non-designating party raises an objection or fails to adequately support the justification for sealing, the designating party may respond to the motion to seal, setting forth the specific facts necessary to justify maintaining confidentiality and filing the documents under seal.

7. Use of any information, documents, or portions of documents marked "Confidential," including all information derived therefrom, shall be restricted solely to the following persons, who agree to be bound by the terms of this Protective Order, unless additional persons are added by the stipulation of counsel or authorized by the Court:

a. Outside counsel of record for the parties, and the administrative staff of outside counsel's law firms.

b. In-house counsel for the parties, and the administrative staff for each in-house counsel.

c. Any party to this action who is an individual, and every employee, director, officer, or manager of any party to this action who is not an individual, but only to the extent necessary to further the interest of the parties in this litigation.

d. Independent consultants or expert witnesses (including partners, associates, and employees of the firm which

employs such consultant or expert) retained by a party or its attorneys for purposes of this litigation, but only to the extent necessary to further the interest of the parties in this litigation.

e. The Court and its personnel, including, but not limited to, stenographic reporters regularly employed by the Court and stenographic reporters not regularly employed by the Court who are engaged by the Court or the parties during the litigation of this action.

f. The authors and the original recipients of the documents.

g. Any court reporter or videographer reporting a deposition.

h. Employees of copy services, microfilming or database services, trial support firms, and/or translators who are engaged by the parties during the litigation of this action.

i. Any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order.

j. Any fact witness in this matter to whom disclosure is reasonably necessary.

k. Any other person with the prior written consent of the designating party.

8. Prior to being shown any documents produced by another party marked "Confidential," any person listed under paragraphs 7(d), 7(i), 7(j), and 7(k) shall agree to be bound by the terms of this Order by signing the agreement attached as Exhibit A.

9. Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving party may only disclose Attorney Eyes Only material to:

a. the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

b. in-house counsel of the receiving party to whom disclosure is reasonably necessary for this litigation;

c. experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed Exhibit A;

d. the Court, court personnel, and court reporters and their staff once appropriate measures have been taken for protection of the information;

e. copy or imaging services retained by counsel to assist in the duplication of Attorney Eyes Only material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any Attorney Eyes Only material to third parties and to immediately return all originals and copies of any Attorney Eyes Only material;

f. witnesses in the action to whom disclosure is reasonably necessary, including during their depositions, and who have signed Exhibit A unless otherwise agreed by the designating party or ordered by the Court; and

g. the author or recipient of a document containing the information.

Pages of transcribed deposition testimony or exhibits to depositions that reveal Attorney Eyes Only material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement.

10. Whenever information designated as "Confidential" or "Attorney Eyes Only" pursuant to this Protective Order is to be discussed by a party or disclosed in a deposition proceeding, the designating party may exclude from the room any person, other than persons designated in paragraph 7, as appropriate, for that portion of the deposition.

11. Notwithstanding the above, the Court shall determine a party's right to use documents or information marked "Confidential" or "Attorney Eyes Only" at a hearing, trial, or other proceeding in this action. The Court may also require the redaction of personal identifiers of confidential information before use at a hearing, trial, or other proceeding in this action. The designation of "Confidential" or "Attorney Eyes Only" shall not affect the Court's determination as to whether the material shall be received into evidence; nor shall such designation constitute the authentication of such material or a waiver of any right to challenge the relevance, confidentiality, or admissibility of such material. This Protective

Order shall not govern the admission of evidence at trial in open court. Should a designating party believe that documents, materials, or information designated as "Confidential" or "Attorney Eyes Only" should not be used in open court during trial, the designating party will have the burden to seek such protections from the Court prior to trial.

12. Each party reserves the right to dispute the confidential status of documents or information claimed by any other party or subpoenaed party in accordance with this Protective Order. If a party believes that any documents or materials have been inappropriately designated as "Confidential" or "Attorney Eyes Only" by another party or subpoenaed party, that party shall confer in good faith with counsel for the designating party. As part of that conferral, the designating party must assess whether redaction is a viable alternative to a confidential designation. If the parties cannot reach an agreement, the parties shall use the Court's informal discovery dispute process to seek a resolution, if the Court uses one. If the parties are unable to resolve the matter informally, the designating party shall file an appropriate motion before the Court requesting that the Court determine whether the Protective Order covers the document in dispute. The designating party bears the burden of establishing good cause for why the document should not be disclosed. A party who disagrees with another party's designation must nevertheless abide by that designation until the matter is resolved by agreement of the parties or by order of the Court.

13. The inadvertent failure to designate a document, testimony, or other material as "Confidential" or "Attorney Eyes Only" prior to disclosure shall not operate as a waiver of the party's right to later designate the document, testimony, or other material as "Confidential" or "Attorney Eyes Only" or limit in any way a party's ability to recall or "claw back" privileged materials that may have been inadvertently disclosed. The receiving party or its counsel shall not disclose such documents or materials if that party knows or reasonably should know that a claim of confidentiality would be made by the producing party. Promptly after receiving notice from the producing party of confidentiality claim, the

receiving party or its counsel shall inform the producing party of all pertinent facts relating to the prior disclosure of the newly designated documents or materials and shall make reasonable efforts to retrieve such documents and materials and to prevent further disclosure.

14. Designation by either party of information or documents as "Confidential," or "Attorney Eyes Only" or failure to so designate, will not constitute an admission that information or documents are or are not confidential or trade secrets. Neither party may introduce into evidence in the litigation, other than a motion to determine whether the Protective Order covers the information or documents in dispute, the fact that the other party designated or failed to designate information or documents as "Confidential" or "Attorney Eyes Only."

15. Upon the request of the producing party, within 30 days after the entry of a final judgment no longer subject to appeal on the merits of this case, or the execution of any agreement between the parties to resolve and settle this case, the parties, and any person authorized by this Protective Order to receive confidential information, shall return to the producing party or third party, or destroy, all information and documents subject to this Protective Order. Returned materials shall be delivered in sealed envelopes marked "Confidential" or "Attorney Eyes Only" to respective counsel. The party requesting the return of materials shall pay the reasonable costs of responding to its request. Notwithstanding the foregoing, counsel for a party may retain archival copies of confidential documents including any copies which contain work-product.

16. This Protective Order shall not constitute a waiver of any party's or non-party's right to oppose any discovery request or object to the admissibility of any document, testimony, or other information.

17. Nothing in this Protective Order shall prejudice any party from seeking amendments to expand or restrict the rights of access to, and use of, confidential

information, or other modifications, subject to order by the Court.

18. The restrictions on disclosure and use of confidential information shall survive the conclusion of this action.

So stipulated:

STOEL RIVES LLP

/s/ *Wendy J. Olson* (with permission)
WENDY J. OLSON

Attorney for Plaintiff

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ *Aaron M. Green*
AARON M. GREEN
Deputy Attorney General

Attorney for Defendant

The Court has reviewed the reasons offered in support of entry of this Stipulated Protective Order and finds that there is good cause to protect the confidential nature of certain information. Accordingly, the Court adopts the above Stipulated Protective Order in this action.

IT IS SO ORDERED.

DATED: December 18, 2025

Honorable Debora K. Grasham
United States Magistrate Judge

EXHIBIT A

I, _____, have been advised by counsel of record for

_____ in _____

of the protective order governing the delivery, publication, and disclosure of confidential documents and information produced in this litigation. I have read a copy of the protective order and agree to abide by its terms.

_____
Signed

_____
Printed

_____
Date