RAÚL R. LABRADOR
ATTORNEY GENERAL

JAMES E. M. CRAIG, ISB #6365
Chief, Civil Litigation and
Constitutional Defense

BRIAN V. CHURCH, ISB #9391
Lead Deputy Attorney General
DAVID J. MYERS, ISB #6528
Deputy Attorney General
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
james.craig@ag.idaho.gov
brian.church@ag.idaho.gov
david.myers@ag.idaho.gov

Attorneys for Defendant

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

REPLY TO RESPONSE [Dkt. 75] TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER [Dkt. 72]

The Attorney General opposes any protective order that would prohibit the parties from "seek[ing] information or us[ing] 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." *Compare* Dkt. 70-1 at 12 (Section 11), Dkt. 74-1 at 12 (Section 11) *with* 89 Fed. Reg. 33063 (Apr. 26, 2024), declared invalid by *Purl v. U.S. Dep't of Health & Human Servs.*, 787 F. Supp. 3d 284 (N.D. Tex. 2025). As the Attorney General noted initially, he opposes St. Luke's request for this overbroad language, which applies to *any* information (even information that is not Confidential) and bars the Attorney General from *even seeking* information that could be subject to the prohibition, based solely on St. Luke's speculation about the purpose of the discovery request. The Court should reject St. Luke's attempt to resuscitate the illegal federal regulation.

The Attorney General moved for the Court to either (i) enter the District's model protective order or (ii) modify St. Luke's proposed protective order and enter the modified order. Dkt. 72 at 1. The Court should grant the Attorney General's motion, Dkt. 72, and enter either the model protective order, or if it declines to do so, modify St. Luke's proposed protective order, and then enter that one as modified.

REPLY

I. The model protective order is sufficient.

St. Luke's has not met its burden of showing why the Court should deviate from the model protective order. *See* Dkt. 72-1 at 4–5 (citing *Hernandez v. Syncrasy*, No. 21-cv-09212-CRB (LJC), 2023 WL 2600452, at *2 (N.D. Cal. Mar. 21, 2023)) *(*setting forth standard). St. Luke's argues against the entry of the model protective order for two primary reasons. Dkt. 75 at 2. It claims "[t]here is a strong privacy interest in the confidentiality of [the requested] 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." *Id.* (citation omitted). But this argument ignores key points about the model protective order. The model protective orders allows for information to be designated as Confidential, restricts to whom Confidential information may be disclosed, and provides that Confidential information may only be used "solely to [] litigat[e] [] this case and shall not be used by any party for any other purpose." *See* Dkt. 72-1 at 4–5 (citations omitted).

Next, St. Luke's argues that the model protective order "is inadequate" because it "does not include an Attorney Eyes Only provision" which it asserts "is critical here given the highly sensitive, medical, and private information concerning reproductive choices…." Dkt. 75 at 2. As above, this argument ignores key features of the model protective order. *See* Dkt. 72-1 at 4–5. But if the real hold up to the model protective order is simply an Attorney Eyes Only provision, then the Court can enter a model protective order like was adopted in *Matsumoto v. Labrador*, No. 1:23-cv-00323-DKG (D. Idaho), Dkt. 107, which includes the Attorney Eyes Only limitation.

Finally, St. Luke's points to the fact that counsel for the parties went back and forth for months and were unable to reach a final agreement for a stipulated protective order. Dkt. 75-2. Yet it claims that "there was only one difference between the parties" and that the Court "should not allow the Defendant to retreat from its agreement." *Id.* Respectfully, the parties were never able to agree upon a complete stipulated protective order—though in the discussions they were able to compromise and agree on component terms of what the final stipulated protective order could have looked like. As St. Luke's was free to seek its preferred form of a protective order, the Attorney General was as well. Where both parties agree a protective order is needed, the model protective order is sufficient, and its entry presents the most efficient resolution of this aspect of the litigation.

II. Even if the Court declined to enter the model protective order, it should still not enter Section 11 as proposed by St. Luke's.

As an alternative, and if the Court declines to enter the model protective order, the Attorney General suggested revising St. Luke's proposed protective order by making changes to Sections 1, 4.2, 4.3, and 5.2, and rejecting proposed language in Sections 11 and 1. Dkt. 72-1 at 6–14. In response to the Attorney General's motion, St. Luke's has submitted a revised protective order that it would like entered and it relies on its arguments made in its other briefing. Dkt. 75 at 1 (referencing Dkts. 70, 74) Dkt. 74-1 (St. Luke's revised proposed protective order).

A. Regarding Sections 1, 4.2, 4.3, and 5.2.

St. Luke's has no issue with the Attorney General's proposed modifications to Sections 1, 4.2, 4.3, and 5.2, saying instead it inadvertently omitted them in the version it originally sought in Dkt. 70. It has now proposed a new protective order, Dkt. 74-1.

Regarding Section 1, however, St. Luke's still presents the Court with a version that omits a portion of the language that was to be part of Section 1:

> 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.

Compare Dkt. 72-7 at 3–4 (Attorney General's email setting forth language); Dkt. 72-7 at 3 (St. Luke's response with modification) *with* Dkt. 74-1 at 2–3 (Section 1).[1] Thus, to the extent the Court declines to enter the model protective order, it should modify St. Luke's most-recent

[1] A part of this language appears in Section 11 of St. Luke's proposed protective order. Dkt. 74-1 at 13.

proposed protective order, Dkt. 74-1, with the addition of the language in Section 1, and otherwise agree to the already-implemented changes in Sections 4.2, 4.3, and 5.2. *See* Dkt. 74-1 at 5, 6, 9 (Sections 4.2, 4.3, 5.2).

B. Regarding Section 11.

The Attorney General continues to oppose St. Luke's proposal in Section 11 that would prohibit the Attorney General from seeking *any* information (Confidential or not), so long as St. Luke's claims the Attorney General is seeking the information "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. 70-1 at 12 (Section 11); Dkt. 74-1 at 12.

St. Luke's first argues that the *Purl* is inapposite, even though it seemingly admits its "language initially was used in a federal regulation that has since been held invalid…." Dkt. 74 at 5. But *Purl* raises an important question for the Court: should the Court adopt, as part of a protective order, a provision based upon HIPAA's privacy protections that has been held to be incompatible with HIPAA? That is the relevance of *Purl*. The answer is no: St. Luke's proposed overbroad provision immunizing St. Luke's from even having to respond to discovery, simply where it asserts the Attorney General has an improper motive in his discovery request, cannot stand, where St. Luke's initiated this lawsuit and invoked the issues upon which the Attorney General seeks discovery.

Next, St. Luke's argues that its position is that "government litigants should not be able to use civil litigation to gather information to investigate nonparty litigants" and argues its position is consistent with *United States v. Heine*, 314 F.R.D. 498 (D. Or. 2016), which it continues to characterize as holding that "the State generally cannot use civil discovery to build a criminal case". Dkt. 74 at 5. But as the Attorney General demonstrated in his consolidated brief, St. Luke's

characterization of *Heine* is not supported. Dkt. 72-1 at 9–10. And St. Luke's argument ignores that St. Luke's itself invoked its providers' actions regarding St. Luke's patients—as with any other case where a party does that, the Attorney General is allowed to investigate those claims for purposes of this case. The Confidential information provisions "protect[]" the information of "non-parties to the litigation."

Finally, St. Luke's says it "is not asking th[e] Court to immunize anyone." Dkt. 74 at 6. It characterizes the language it seeks in Section 11 as "only prohibit[ing] the Attorney General from directly or indirectly using information obtained in this case to investigate or impose liability on persons involved in providing, obtaining, or facilitating reproductive health care…." *Id.* But the Attorney General has already agreed to the model protective order's limitation on the use of Confidential information. The language proposed by St. Luke's goes far beyond Confidential information, reaching *any* information, and prohibits the Attorney General from *even seeking* information St. Luke's could argue, without foundation, is sought for a forbidden purpose—contrary to its new characterization of only prohibiting "direct[] or indirect[] us[e]." This does immunize it from discovery directly relevant to this lawsuit that it brought. Such is not fair to any defendant.

CONCLUSION

The Court should enter its model protective order to resolve the dispute between St. Luke's and the Attorney General. If the Court declines to enter the model protective order, the Court should find St. Luke's proposed order is inappropriate and incorporate changes to the protective order that the parties agreed upon and reject St. Luke's language in Section 11.

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:

Wendy J. Olson
wendy.olson@stoel.com

Alaina Harrington
alaina.harrington@stoel.com

Lindsay C. Harrison
lharrison@jenner.com

Jessica Ring Amunson
jamunson@jenner.com

Sophia W. Montgomery
smontgomery@jenner.com

Ruby C. Giaquinto
rgiaquinto@jenner.com

Attorneys for Plaintiff St. Luke's Health System

Stephen L Adams
sadams@gfidaholaw.com

Chad Golder
cgolder@aha.org

Attorneys for Proposed Amici American Hospital Association, America's Essential Hospitals, and the American Association of Medical Colleges

/s/ *David J. Myers*
DAVID J. MYERS