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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 MOTION FOR PROTECTIVE ORDER

Under Federal Rule of Civil Procedure 26(c), and for the reasons articulated in the supporting brief, the Attorney General moves the Court to enter the District of Idaho's model protective order.

In the alternative, if the Court declines to enter the model protective order, the Court should find St. Luke's proposed order is inappropriate as presented. The Court should replace language in Sections 1, 4.2, 4.3, and 5.2 with other language that was either agreed to or unobjected to, and reject the language in Sections 1 and 11 that the Attorney General objects to, and then enter that protective order as modified.

This motion is supported by the accompanying brief, Declaration of Counsel, and exhibits to the Declaration of Counsel.

DATED: December 2, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on December 2, 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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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 CONSOLIDATED RESPONSE TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER [DKT. 70] AND BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR PROTECTIVE ORDER**

INTRODUCTION

In 2024, the U.S. Department of Health and Human Services purported to implement a new HIPAA Privacy Rule that prohibited the "use or disclos[ure] of protected health information" in three circumstances:

> (1) To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.
> (2) To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.
> (3) To identify any person for any purpose described in paragraphs (a)(5)(iii)(A)(1) or (2) of this section.

89 Fed. Reg. 33063 (Apr. 26, 2024). Yet that rulemaking was found to be illegal and beyond the Department's authority to implement and was vacated. *See Purl v. U.S. Dep't of Health & Human Servs.*, 787 F. Supp. 3d 284 (N.D. Tex. 2025).

St. Luke's asks that this Court nonetheless implement this vacated regulation through a protective order prohibiting 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." *See* Dkt. 70-1 at 12 (Section 11).

The Attorney General 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 this attempt to resuscitate the illegal federal regulation.

The Attorney General agrees a protective order is needed in this litigation. The Attorney General—and, as discussed later, St. Luke's—agreed that a provision of the model protective order

should be included that specifies that use of Confidential information or documents "shall be restricted solely to the litigation" and that prohibits using Confidential materials "for any other purpose." That provision is sufficient to address St. Luke's concerns related to the Confidential information that St. Luke's will have to disclose in this litigation that St. Luke's commenced.

The Attorney General must defend the lawsuit St. Luke's has initiated by probing St. Luke's and its agents' relevant actions and how those actions interact with EMTALA and Idaho Code § 18-622. St. Luke's choice to commence the lawsuit, however, does not carry with it an entitlement to broad civil, criminal, and administrative investigative, discovery, and use immunity. While the Attorney General agrees not to use Confidential materials "for any other purpose," it goes too far to bar the Attorney General from even seeking basic information at the heart of this suit, or barring the Attorney General from using *non*-Confidential information as he is otherwise lawfully allowed to use, based on nothing more than St. Luke's speculation as to the motive in seeking the information.

The Court should resolve the dispute by entering the model protective order. In the alternative, if the Court declines to enter the model protective order, the Court should find that St. Luke's proposed protective order is inappropriate and modify Sections 1, 4.2, 4.3, and 5.2, to account for language that the parties previously agreed to or had no objection to. The Court should reject St. Luke's language in Sections 1 and 11 that attempts to implement the vacated regulation.

BACKGROUND

In late October, the parties agreed they were at an impasse regarding the form of a protective order. Decl. Counsel. Ex. 5. That email followed a series of communications in which the parties narrowed their disputes down to three issues, and then ultimately narrowed the dispute down to one issue. *Id.* The last version of the full proposed protective order was sent by the Attorney General's counsel to St. Luke's counsel on October 8, 2025. *Id.* Ex. 1. The emails afterward

captured agreement upon specific changes for Sections 1, 4.2, 4.3. *Id.* Ex. 5 (10/14 email setting out three issues, 10/15 email narrowing three to "two remaining items," and 10/27 email agreeing to "[t]he existing language in the model protective order (with the addition of Attorney Eye Only [requested in the prior email from St. Luke's, because it] represents an appropriate limitation on the *use* of confidential information.").

In mid-November, Plaintiff filed its motion for a protective order. Dkt. 70. As expected, St. Luke's proposed protective order, Dkt. 70-1, contains the addition in Section 11 that the Attorney General objects to. However, unexpectedly and without notice to the Attorney General, St. Luke's proposed protective order omits agreed-upon changes for Sections 1, 4.2, and 4.3, and the unobjected-to proposed language in Section 5.2. *Compare* Dkt. 70-1 *with* Counsel Decl. Exs. 2, 3 (last full version of the parties' protective order drafts), 5 (email chain with agreed-upon revisions). Thus, the Attorney General objects to St. Luke's current proposed protective order, Dkt. 70-1. The Attorney General requests that the Court enter the model protective order. Should the Court decline to enter the model protective order, St. Luke's proposed protective order is inappropriate and the Court should implement the changes that the parties agreed upon for Sections 1, 4.2, and 4.3, and the unobjected-to language in Section 5.2, and reject St. Luke's proposed immunity provision in Sections 11 and 1.

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. Liggett 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 Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation omitted). "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

I. To resolve the dispute, the Court should enter the model protective order.

The Attorney General agrees a protective order is appropriate in this case regarding the transmittal of Confidential information, but the Attorney General objects to St. Luke's proposed protective order, Dkt. 70-1. The simplest way to resolve this matter, and what the Attorney General now asks that the Court do, is to adopt the District of Idaho's model protective order. As other districts within the Ninth Circuit recognize, model protective orders are "presumptively reasonable." *E.g., Hernandez v. Syncrasy*, No. 21-cv-09212-CRB (LJC), 2023 WL 2600452, at *2 (N.D. Cal. Mar. 21, 2023) (citation omitted). "A party seeking to deviate from the model protective order

[1] To be sure, the compelling reasons test for sealing documents 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.

bears the burden of showing the specific harm and prejudice that will result if its request is not granted." *Id.* (citations omitted). For the reasons articulated in this brief, St. Luke's has not met its burden of justifying the court-ordered immunity provisions it now seeks in Sections 1 and 11.

Rather, the Court should find that the model protective order is sufficient to address St. Luke's concerns. *First*, the model protective order allows for the designation of "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," which would include material protected under Rule 26 and material protected under HIPAA privacy rules, 45 C.F.R. 164. *See* Model Protective Order ¶ 3. *Second*, the model protective order limits the persons to whom Confidential-designated materials may be disclosed. *Id.* ¶ 7. *Third*, and most important based upon St. Luke's reasons in its brief, the model protective order limits the use of Confidential information:

> Use 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. 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.

Id. ¶ 1. Thus, St. Luke's concerns are addressed by the model protective order, and the Court should enter the model protective order to resolve the parties' dispute.

II. In the alternative, 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 Sections 11 and 1.

A. The Court should adopt the changes the parties agreed to for Sections 1, 4.2, and 4.3, and the unobjected-to language in Section 5.2.

Through their emails, counsel for St. Luke's and the Attorney General narrowed down disputes based on the last full version of a proposed stipulated protective order. Decl. Counsel. Ex. 1 (email transmitting 10/8/25 version), 2, 3 (10/8/25 version), 4 (email chain with narrowing of issues). If the Court rejects the model protective order, instead of issuing St. Luke's custom protective order as worded, the Court should adopt the changes the parties agreed to or that were unobjected to. Those Sections are 1, 4.2, and 4.3 (agreed upon changes), and 5.2 (unobjected-to language).

First, regarding Section 1, the parties agreed to incorporate the language from the model protective order in place of St. Luke's overbroad language ("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."). In particular, St. Luke's agreed to language from the model protective order with reference to an Attorney Eyes Only provision:

> We are fine with that language from the Model Protective Order but it of course needs to include the reference to AEO material: "Use of any information or documents labeled "Confidential" or "Attorney Eyes Only" or "AEO" 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."

Counsel Decl. Ex. 5 at 3; *see also id.* (Attorney General's email suggesting model protective order language "[i]nstead of St. Luke's initial proposal.").

Second, regarding Sections 4.2 and 4.3, the parties agreed that subsection "a" of each Section would provide that Confidential and Attorney Eye Only material may be shared with "the receiving party's counsel of record in this action including for Defendant all deputies attorney general, including special deputies attorney general, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation." Counsel Decl. Ex. 5 at 4, 5. This language was agreed upon by the Attorney General to avoid any ambiguity about those on his attorney team who could be provided Confidential or Attorney Eye Only information.

Third, regarding Section 5.2(a), St. Luke's did not object to language that provided that "[i]f 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) (e.g., by making appropriate markings in the margins <u>**or**</u> by separately addressing in an appendix which parts are protected)." Counsel Decl. Exs. 2 at 9, 3 at 9 (emphasis added); *see also id.* Ex. 5 And yet the proposed protective order omits the "or" and uses "and." *See* Dkt. 70-1 at 10. The "or" is necessary based on the limitations of the e-discovery software the Attorney General utilizes.

Given that St. Luke's already agreed to these changes or did not object to the language, the Court should adopt these changes and implement them, if it declines to enter the model protective order.

B. The Court should reject the language proposed in Section 11 and the corresponding language in Section 1.

The most significant issue before the Court is whether it should, effectively, grant immunity to St. Luke's from discovery related to it and its agents' actions, as those actions are probed to

determine whether there is any conflict between EMTALA and Idaho Code § 18-622 even under St. Luke's reading of the statute.

Two sections of St. Luke's protective order are at issue. First, in Section 1 of the proposed protective order, the Attorney General objects to the underlined passage:

> 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.

Dkt. 70-1 at 2–3 (emphasis added).

In Section 11 of the proposed protective order, the Attorney General objects to the following underlined language:

> 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.

Dkt. 70-1 at 12–13 (emphasis added).

1. St. Luke's is incorrect regarding the status of its proposed language in Section 1.

St. Luke's argues that the Attorney General "agreed to [its] provision" set forth in Section 1. Dkt. 70 at 6. This is not true, as St. Luke's own evidence shows. The Attorney General informed St. Luke's that "[i]nstead of the language you suggest, we would be fine incorporating the model protective order's language into the suggested protective order, section 1." Dkt. 70-5 at 3. St. Luke's counsel then wrote back that "[w]e are fine with that language from the Model Protective Order but it of course needs to include the reference to AEO material." *Id.* at 2. The Attorney General agreed with the addition of the Attorney Eyes Only phrase. Counsel Decl. Ex. 5 at 2.

Thus, contrary to St. Luke's position to the Court, the Attorney General did not "agree[]" to the language in Section 1 of St. Luke's proposed protective order; rather, St. Luke's own evidence shows that its counsel agreed to wholly different language—language from the model protective order with the clarification that the limitation also extended to Attorney Eyes Only information.

2. Sections 11 and 1, as proposed by St. Luke's, should be rejected.

St. Luke's argues that this Court should adopt its language for several reasons. But none justify the overbroad language that St. Luke's proposes.

First, St. Luke's contends that its language "would ensure that material produced in discovery is not used for purposes other than the litigation in this case…." Dkt. 70 at 5. Yet, this protection is already built into the model protective order's language that the parties agreed to. In support of its position, St. Luke's cites *United States v. Heine*, 314 F.R.D. 498 (D. Or. 2016), for the proposition that "the State generally cannot use civil discovery to build a criminal case." Dkt. 70 at 5. But *Heine* recounted that the Supreme Court of the United States held "that the government did not violate the Fifth Amendment rights of corporate executives by using evidence obtained from an FDA civil proceeding in a related criminal prosecution against the executives." *Heine*, 314

F.R.D. at 509 (citing *United States v. Kordel*, 397 U.S. 1 (1970)). The *Heine* court further quoted the Supreme Court, which differentiated the case it had at hand:

> We do not deal here with a case where the Government has brought a civil action solely to obtain evidence for its criminal prosecution or has failed to advise the defendant in its civil proceeding that it contemplates his criminal prosecution; nor with a case where the defendant is without counsel or reasonably fears prejudice from adverse pretrial publicity or other unfair injury; nor with any other special circumstances that might suggest the unconstitutionality or even the impropriety of this criminal prosecution.

Id. (quoting *Kordel*, 397 U.S. at 11–12).

The *Heine* case is inapposite and unsupportive of St. Luke's overbroad proposition. This is not a case where the Attorney General *brought* a civil lawsuit against St. Luke's. Instead, St. Luke's brought a civil lawsuit against him, and the Attorney General is merely defending this lawsuit. The *Heine* matter does not support the proposition that a government is not entitled to ask for discovery relevant to a civil case brought against it. St. Luke's position would allow it to bring a lawsuit against the Attorney General *and*, by merely alleging a forbidden motive, prevent the Attorney General from even asking for information in discovery needed to defend the same lawsuit.

Second, St. Luke's suggests that the Court should adopt the language it proposes, in line with the vacated federal regulation, "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." Dkt. 70 at 5. Yet, again, the parties 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.

Third, St. Luke's says it "seeks assurances that its providers will not be prosecuted or be subject to administrative liability merely because St. Luke's has brought this constitutional challenge." Dkt. 70 at 6. Again, the parties already agreed to the model protective order's use limitation on Confidential information. But more troubling is the fact that St. Luke's is asking the Court to grant it immunity from possible state-law crimes. The Court lacks the inherent power to grant criminal immunity, let alone do so by protective order. *See 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.").[2]

Fourth, St. Luke's points to discovery relevant to the exact issue at the heart of this lawsuit and itself imputes a motive to the Attorney General's requests, claiming he seeks information to "potentially identify providers whose conduct Defendant believes is proscribed by Idaho Code § 18-622." Dkt. 70 at 7. Any concern is addressed, again, by the model protective order language and by the fact that to bar the Attorney General from probing into the *exact* issue at the heart of this litigation would be to deny the Attorney General all access to relevant information. St. Luke's then confusingly argues that the Attorney General "should not be allowed to even provide the identity of providers involved or language from St. Luke's medical records describing termination of a pregnancy that could be considered an abortion." *Id.* To the Court? To other providers? To persons to whom disclosure is otherwise authorized? Again, the model protective order and its provisions address any concern here.

[2] It is also worth noting that the Attorney General lacks general prosecutorial authority in the State of Idaho, and therefore lacks the authority to prosecute violation of the criminal abortion statute unless a county prosecutor requests his assistance. *See generally* Idaho Att'y Gen'l Opinion 23-01, 2023 WL 4397789 (2023).

Fifth, St. Luke's argues that its language "does not prevent the Attorney General's office from independently investigating or enforcing Idaho law against anybody if it has an independent basis for such action." Dkt. 70 at 7. It contends such language is necessary to "vindicate" its "ability to bring constitutional claims like those involved in this suit without facing the chill of retaliatory enforcement action." *Id.*; *see also id.* (same for providers). But what St. Luke's fails to grapple with is the fact that *it* brought this lawsuit, and it cannot now call on the Court to grant it civil, criminal, or administrative investigative, discovery, or use immunity to the extent it violated Idaho Code § 18-622. The Attorney General has reasonably agreed to the model protective order's limitation on the use of Confidential information. St. Luke's proposal goes much farther by prohibiting 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).

By its terms, Section 11 as proposed by St. Luke's will allow it to preclude even routine discovery requests merely by alleging a forbidden purpose, such as:

- An interrogatory seeking the identity and contact information of each person having any knowledge or information concerning the facts and circumstances underlying, supporting, or tending to prove the allegations set forth in the Complaint, the subject matter of the information that St. Luke's believes is possessed by that person, and the basis for each person's knowledge of the allegations;
- A request for production seeking all documents that relate to St. Luke's responses to any other discovery request in this matter;

- An interrogatory seeking identification of and contact information for physicians who have treated the Relevant Individual Patients[3] whose medical treatment St. Luke's has put at issue;
- An interrogatory seeking identification of each person St. Luke's may call as a lay witness at the trial in this case and at any hearing in this matter and the general substance of the facts to which each witness may testify;
- A contention interrogatory seeking all facts that support any contention of St. Luke's and identification of every person with knowledge of such facts and of every document that memorializes, reflects, or refers to such facts;

St. Luke's Section 11 is also unworkable, requiring St. Luke's and the Court to divine in advance what is the motive of the Attorney General's discovery requests. Is any specific request motivated by a prohibited desire either to seek or to later use responsive information in a witch hunt? Or is it instead motivated by a permitted desire to seek or use responsive information to defend against St. Luke's claims in this case? And how is the Attorney General to rebut St. Luke's automatic (negative) assumptions about the Attorney General's motives?

Section 11, as proposed by St. Luke's, should be rejected. The same is true of the overbroad language in Section 1, limiting the use of all information, not just Confidential information,

[3] St. Luke's defines "Relevant Individual Patients" in its discovery requests as "the six patients mentioned in Dr. Seyb's declaration attached to the preliminary injunction motion in this case (ECF No. 2-2); all of the Jane Doe patients discussed in the declarations of Drs. Corrigan, Cooper, Seyb, and Huntsberger filed in *United States v. Idaho*; the individual patient plaintiffs in *Adkins v. Idaho* (Jennifer Adkins, Jillaine St. Michel, Kayla Smith, and Rebecca Vincen-Brown), as well as all other patients about whom physicians testified in that case (*see, e.g.*, Findings of Fact and Conclusions of Law ¶¶ 11, 12, 13, 14, 15, 19)." Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant at 6.

produced or disclosed in this case. This language, reaching beyond Confidential information, is well beyond what should be authorized here.

CONCLUSION

For the reasons above, 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 Sections 11 and 1.

DATED: December 2, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on December 2, 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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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 **DECLARATION OF COUNSEL**

I, BRIAN V. CHURCH, declare as follows:

1. I am a Lead Deputy Attorney General for the Office of the Attorney General, and serve as an attorney within the Civil Litigation and Constitutional Defense Division. I am one of the attorneys for the defendant in this action, the Attorney General.

2. Attached as **Exhibit 1** is an email that I sent to counsel for Plaintiff, St. Luke's, on October 8, 2025. A PDF of the word document of the proposed protective order with the Attorney General's redlines attached to the email in Exhibit 1 is attached as **Exhibit 2.** A PDF of the comparison word document also attached to the email in Exhibit 1 is attached as **Exhibit 3.**

3. In response to Exhibit 1, St. Luke's counsel advised they were reviewing the proposed changes. Attached as **Exhibit 4** is the email chain with those messages on October 9, 2025.

4. On October 14, 2025, Plaintiff's counsel followed up regarding the proposed protective order, which led to a string of communications between that date and October 29, 2025. That email chain is attached as **Exhibit 5**.

5. The last correspondence I have from opposing counsel regarding the protective order, as of this date, is the October 29, 2025 email shown in Exhibit 5.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: December 2, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on December 2, 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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/s/ *Brian V. Church*
BRIAN V. CHURCH

From: Brian Church
Sent: Wednesday, October 8, 2025 4:39 PM
To: Olson, Wendy J.; David Myers; James Craig; Harrison, Lindsay C.; Giaquinto, Ruby C.
Cc: Harrington, Alaina P.; Montgomery, Sophia W.; Amunson, Jessica Ring
Subject: St. Luke's - follow up on outstanding issues
Attachments: Comparison OAG to St. Luke.docx; St. Lukes_EMTALA - Stipulated Protective Order (08.03.2025 SR Redline)(150000620.1)_AG_redline (1).docx

Wendy:

Thanks for meeting with David and me last week. Here's Defendant's position on the two outstanding issues.

Protective Order

We are still agreeable to the model protective order; it is unclear what St. Luke's believes is unaddressed by the model protective order. The model protective order is presumptively reasonable for cases before the District of Idaho.

However, if St. Luke's still insists on a protective order based on what it sent last time, I've attached here the redline version that my client would be agreeable to along with a comparison of your file and mine.

Request to shift the deadlines

Given that Idaho's law protecting life is enjoined at this time, we can't agree to a four-month shift of the deadlines.

We will agree to a three-month shift of non-expired deadlines (we're only agreeing to three months because of the difficulties with the deadlines falling in the holiday season, otherwise we would suggest two months) *if* Plaintiff agrees to (1) either the model protective or the version sending today; and (2) agrees that we need not identify, on a privilege log, all attorney-client communications that predate the filing of the complaint in *St. Luke's Health System, Ltd. v. Labrador*, No. 1:25-cv-00015-BLW (D. Idaho), but were sent on or after the date of the filing of the complaint in *United States v. Idaho*, No. 1:22-cv-329-BLW (D. Idaho).

--

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Attorneys for Plaintiff

IN THE 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 **STIPULATED PROTECTIVE ORDER**

One or more of the parties in this matter anticipates the 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 medical records and that may be appropriately subject to protection under Federal Rule of Civil Procedure 26(c) and the Health Insurance Portability and Accountability Act and its implementing regulations, 45 C.F.R. § 164.512(e)(l).

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:

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.

2. <u>"CONFIDENTIAL" AND "ATTORNEY EYES ONLY" MATERIAL</u>

"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; (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

[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.

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 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, including for Defendant all deputies attorney general however denominated, 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, including for Defendant all deputies attorney general however denominated, 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) (*e.g.*, by making appropriate markings in the margins or 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 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. -

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. .

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.

DATED: ~~June~~~~August~~October __, 2025

STOEL RIVES LLP

/s/______________________
Wendy J. Olson
Alaina Harrington

JENNER & BLOCK LLP

/s/________________
Lindsay C. Harrison
Jessica Ring Amunson
Sophia W. Montgomery
Ruby C. Giaquinto

Attorneys for Plaintiff

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/_________________________________
Brian V. Church
David J. Myers

Attorneys 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: _________________ ____
Honorable B. Lynn Winmill

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

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 B~~

~~ATTESTATION FOR A REQUESTED USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI) POTENTIALLY RELATED TO REPRODUCTIVE HEALTH CARE~~

~~Date:~~ ____

~~Patient:~~ ______________________________ ~~Date of Birth:~~ ____________

~~Other names under which patient has been treated:~~ ______________________
____

~~If applicable, the class of persons for whom PHI is sought:~~
____
____
____

~~Description of information requested (*e.g.*, "visit summary from [date]," or "information from all visits between [date] and [date]"):~~ ______________________
____

~~I am requesting that~~ ____________________ ~~produce PHI that is potentially related to reproductive health care. I attest that the use or disclosure of PHI that I am requesting is not for a purpose prohibited by the HIPAA Privacy Rule at 45 CFR § 164.502(a)(5)(iii) because of one of the following (check one box):~~

~~**Option 1:** ☐ The purpose of the use or disclosure of PHI is **not** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.~~

~~**Option 2:** ☐ The purpose of the use or disclosure of PHI **is** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, or to identify any person for such purposes, but the reproductive health care at issue was **not lawful** under the circumstances in which it was provided.~~

~~I understand that I may be subject to criminal penalties pursuant to 42 U.S.C. § 1320d-6 if I knowingly and in violation of HIPAA obtain individually identifiable health information relating to an individual or disclose individually identifiable health information to another person.~~

~~Signature of the person requesting PHI:~~ ____________________ ~~Date:~~ ________

~~Printed Name:~~ ____________________ ~~Title:~~ ____________________

~~Agency Name:~~ ____

~~(If signed by a representative) Authority to act for that person:~~ ____________________
____

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Attorneys for Plaintiff

IN THE 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 **STIPULATED PROTECTIVE ORDER**

One or more of the parties in this matter anticipates the 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 medical records and that may be appropriately subject to protection under Federal Rule of Civil Procedure 26(c) and the Health Insurance Portability and Accountability Act and its implementing regulations, 45 C.F.R. § 164.512(e)(l).

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~~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. <u>"CONFIDENTIAL" AND "ATTORNEY EYES ONLY" MATERIAL</u>

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[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.

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 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.

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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 including for Defendant all deputies attorney general however denominated, 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, including for Defendant all deputies attorney general however denominated, 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) (*e.g.*, by making appropriate markings in the margins ~~and, if desired,~~or 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

Commented [A1]: Moved to Section 14

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. .

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.

DATED: ~~August~~October __, 2025

STOEL RIVES LLP

/s/______________________
Wendy J. Olson
Alaina Harrington

JENNER & BLOCK LLP

/s/________________
Lindsay C. Harrison
Jessica Ring Amunson
Sophia W. Montgomery
Ruby C. Giaquinto

Attorneys for Plaintiff

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ ___________________________________
Brian V. Church
David J. Myers

Attorneys 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: ________________ ____
Honorable B. Lynn Winmill

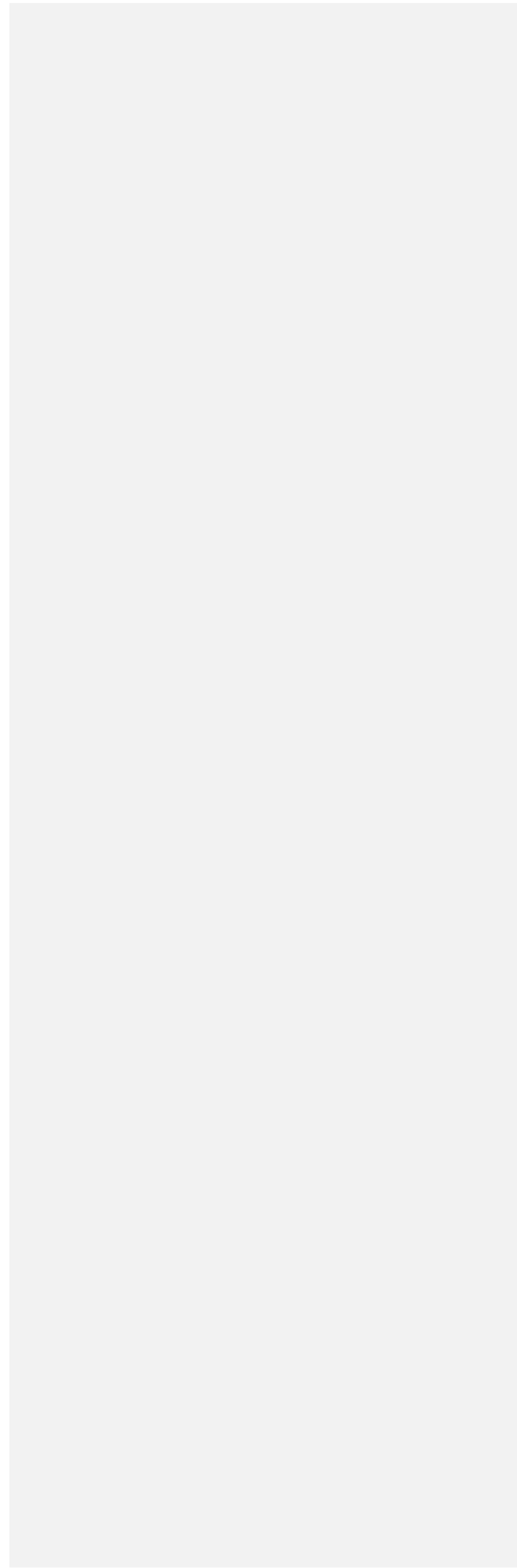

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

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 B~~

~~ATTESTATION FOR A REQUESTED USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI) POTENTIALLY RELATED TO REPRODUCTIVE HEALTH CARE~~

~~Date:~~ ____________________

~~Patient:~~ ____________________ ~~Date of Birth:~~ ____________

~~Other names under which patient has been treated:~~ ____________________

~~If applicable, the class of persons for whom PHI is sought:~~ ____________________

~~Description of information requested (*e.g.*, "visit summary from [date]," or "information from all visits between [date] and [date]"):~~ ____________________

~~I am requesting that~~ ____________ ~~produce PHI that is potentially related to reproductive health care. I attest that the use or disclosure of PHI that I am requesting is not for a purpose prohibited by the HIPAA Privacy Rule at 45 CFR § 164.502(a)(5)(iii) because of one of the following (check one box):~~

~~**Option 1:** ☐ The purpose of the use or disclosure of PHI is **not** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.~~

~~**Option 2:** ☐ The purpose of the use or disclosure of PHI **is** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, or to identify any person for such purposes, but the reproductive health care at issue was **not lawful** under the circumstances in which it was provided.~~

~~I understand that I may be subject to criminal penalties pursuant to 42 U.S.C. § 1320d-6 if I knowingly and in violation of HIPAA obtain individually identifiable health information relating to an individual or disclose individually identifiable health information to another person.~~

~~Signature of the person requesting PHI:~~ ____________ ~~Date:~~ ________

~~Printed Name:~~ ____________ ~~Title:~~ ____________

~~Agency Name:~~ ____________________

~~(If signed by a representative) Authority to act for that person:~~ ____________________

150000620 1 0048059-00016

DEFENDANT'S EXHIBIT 4

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Thursday, October 9, 2025 11:53 AM
To: Brian Church; David Myers; James Craig; Harrison, Lindsay C.; Giaquinto, Ruby C.
Cc: Harrington, Alaina P.; Montgomery, Sophia W.; Amunson, Jessica Ring; Schwei, Daniel S.
Subject: RE: St. Luke's - follow up on outstanding issues

Hi Brian and David,

I received out of office messages from both of you, one indicating that David is out until October 13, and one from you indicating you are out until October 14. Because that causes a problem with the October 13 deadline, we are going to go ahead and reach out to Marci Smith now.

Best,
Wendy

From: Olson, Wendy J.
Sent: Thursday, October 9, 2025 10:21 AM
To: Brian Church <brian.church@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>; Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>
Cc: Harrington, Alaina P. <alaina.harrington@stoel.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Schwei, Daniel S. <dschwei@jenner.com>
Subject: RE: St. Luke's - follow up on outstanding issues

Hi Brian,

Thanks for getting back to us. We are still reviewing your proposed changes to the protective order and need to discuss it with our client. We would agree to a three month extension rather than four, but we cannot agree to your conditions, particularly since with respect to one you are asking us to forego the relief the Court already provided after the parties briefed the issue. As you know, resolving this by October 13 is critical to us. If you maintain your position, we need to reach out to the Court, through Marci Smith, to see if this is a discovery dispute that the law clerks will set an expedited briefing schedule for, or if we should just file a motion. Please let us know your position by the close of business today, at which point we will get in touch with the Court given the time sensitivity.

Best,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Wednesday, October 8, 2025 4:39 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>; Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>
Cc: Harrington, Alaina P. <alaina.harrington@stoel.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>
Subject: St. Luke's - follow up on outstanding issues

Wendy:

Thanks for meeting with David and me last week. Here's Defendant's position on the two outstanding issues.

Protective Order

We are still agreeable to the model protective order; it is unclear what St. Luke's believes is unaddressed by the model protective order. The model protective order is presumptively reasonable for cases before the District of Idaho.

However, if St. Luke's still insists on a protective order based on what it sent last time, I've attached here the redline version that my client would be agreeable to along with a comparison of your file and mine.

Request to shift the deadlines

Given that Idaho's law protecting life is enjoined at this time, we can't agree to a four-month shift of the deadlines.

We will agree to a three-month shift of non-expired deadlines (we're only agreeing to three months because of the difficulties with the deadlines falling in the holiday season, otherwise we would suggest two months) *if* Plaintiff agrees to (1) either the model protective or the version sending today; and (2) agrees that we need not identify, on a privilege log, all attorney-client communications that predate the filing of the complaint in *St. Luke's Health System, Ltd. v. Labrador*, No. 1:25-cv-00015-BLW (D. Idaho), but were sent on or after the date of the filing of the complaint in *United States v. Idaho*, No. 1:22-cv-329-BLW (D. Idaho).

--

Brian V. Church | Lead Deputy Attorney General
Civil Litigation and Constitutional Defense Division
Office of the Attorney General | State of Idaho
Phone: (208) 334-2400

NOTICE: This message, including any attachments, is intended only for the individual(s) or entity(ies) named above and may contain information that is confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please reply to the sender that you have received this transmission in error, and then please delete this email.

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Wednesday, October 29, 2025 8:32 PM
To: Brian Church; David Myers; James Craig
Cc: Harrison, Lindsay C.; Giaquinto, Ruby C.; Montgomery, Sophia W.; Amunson, Jessica Ring; Harrington, Alaina P.
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Thanks Brian. We will file the motion we think is appropriate.

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Wednesday, October 29, 2025 6:17 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Wendy:

I don't expect either side's position will change following an informal conference, and the Court has already been made aware of the protective order issue. I think St. Luke's can proceed with its motion, noting the single disagreement remaining with the protective order.

Brian
--

Brian V. Church | Lead Deputy Attorney General
Civil Litigation and Constitutional Defense Division
Office of the Attorney General | State of Idaho
Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Tuesday, October 28, 2025 8:30 AM
To: Brian Church <brian.church@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Thanks Brian. Is this something you want to confer with Marci Smith about? She may be able to tell us what way the judge is leaning. We also are fine with just filing our motion for the protective order we have proposed. Please also let us know if you want to discuss an expedited briefing schedule for this.

Thanks,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Monday, October 27, 2025 3:11 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Wendy:

We're not able to agree to what your client wants to include in Section 11:

- "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 language follows in the path of language in the invalid "HIPAA Privacy Rule to Support Reproductive Health Care," something which Congress has not authorized. *Purl v. U.S. Dep't of Health & Human Servs.*, No. 2:24-cv-00228-Z (N.D. Tex. June 18, 2025).

This language is also overbroad. Plus, we do not think it appropriate for a court to grant blanket criminal, civil, administrative, investigative, or discovery immunity to a plaintiff simply because that plaintiff brings a civil lawsuit.

The existing language in the model protective order (with the addition of Attorney Eye Only) represents an appropriate limitation on the *use* of confidential information.

Please let us know how you are proceeding.

Thanks,

Brian
--

Brian V. Church | Lead Deputy Attorney General
Civil Litigation and Constitutional Defense Division
Office of the Attorney General | State of Idaho
Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Wednesday, October 15, 2025 2:36 PM
To: Brian Church <brian.church@ag.idaho.gov>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia

W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Hi Brian,

Thanks for your email.

It looks like we are very close on the protective order. Turning only to the two remaining items:

- Item 3. We are fine with that language from the Model Protective Order but it of course needs to include the reference to AEO material: "Use of any information or documents labeled "Confidential" or "Attorney Eyes Only" or "AEO" 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."
- Item 4. It is important to our client to include the language we have proposed in Section 11. We do not think it is superfluous. It looks like we will have to litigate this issue.

On the motion for extension, we still cannot agree to your condition. As you know, we already have litigated this issue. We will file our motion for an extension of time. We appreciate your consideration of our request.

Best,
Wendy

From: Brian Church <brian.church@ag.idaho.gov>
Sent: Wednesday, October 15, 2025 1:27 PM
To: Olson, Wendy J. <wendy.olson@stoel.com>; David Myers <David.Myers@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: RE: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Wendy:

Protective Order

- Item 1 (identification of confidential material): Thanks for agreeing to that.
- Item 2 (sections 4.2 and 4.3): We are fine with "all deputies attorney general, including special deputies attorney general,"
- Item 3: The model protective order has the following language. Instead of the language you suggest, we would be fine incorporating the model protective order's language into the suggested protective order, section 1

  - Use 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. 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.
- Item 4 (section 11): It looks to me that the concern about how we use confidential information or confidential documents is already addressed as part of the general language from the model protective order, which I am suggesting we include for item 3. We can't agree to include the superfluous language in Section 11.

Motion for Extension

- Wendy, we will agree to a three-month shift of the deadlines, so long as St. Luke's agrees that we need not identify, on a privilege log, all attorney-client communications that predate the filing of the complaint in *St. Luke's Health System, Ltd. v. Labrador*, No. 1:25-cv-00015-BLW (D. Idaho), but were sent on or after the date of the filing of the complaint in *United States v. Idaho*, No. 1:22-cv-329-BLW (D. Idaho). We don't see the need for anything more than a brief shift of deadlines and we have good reason not to want this case to take longer than necessary, but we're willing to be accommodating and agree to a longer extension than we otherwise would if it will save us the unnecessary expenditure of time and resources to generate a privilege log that will not help either party.

--

Brian V. Church | Lead Deputy Attorney General
Civil Litigation and Constitutional Defense Division
Office of the Attorney General | State of Idaho
Phone: (208) 334-2400

From: Olson, Wendy J. <wendy.olson@stoel.com>
Sent: Tuesday, October 14, 2025 12:40 PM
To: David Myers <David.Myers@ag.idaho.gov>; Brian Church <brian.church@ag.idaho.gov>; James Craig <James.Craig@ag.idaho.gov>
Cc: Harrison, Lindsay C. <lharrison@jenner.com>; Giaquinto, Ruby C. <rgiaquinto@jenner.com>; Montgomery, Sophia W. <smontgomery@jenner.com>; Amunson, Jessica Ring <jamunson@jenner.com>; Harrington, Alaina P. <alaina.harrington@stoel.com>
Subject: St. Luke's v. Labrador -- protective order and extension of scheduling order deadlines

Good afternoon David and Brian,

We are reaching out on two issues: (1) the protective order; and (2) our request to extend the unexpired deadlines in the Scheduling Order.

First, we agree that there are four remaining issues on the protective order. Our position on them is as follows:

1. We agree to your request that you be allowed to identify documents you are designating as AEO or confidential with an appendix.
2. With respect to your change of the language regarding who you can share AEO/confidential material with, we propose the following slight modification:

   "the receiving party's counsel of record in this action including for Defendant all deputies attorney general, including special deputies attorney general, ~~however denominated,~~ as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;"

3. We continue to believe it is appropriate to include the sentence at the end of section 1 limiting the use of such information, "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." We cannot agree to remove it.
4. We continue to believe it is appropriate to include the sentence at the end of section 11, "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." We cannot agree to remove it.

Please let us know if you agree to our revision on issue #2 above and if you still insist on removing the sentences described in issues #3 and #4 above.

Second, as you know we have until Thursday to file our briefing regarding the extension of the scheduling order we previously proposed. As we explained in our email on Thursday, Oct. 9, to which we received out of office replies from Brian and David, we cannot agree to your two conditions. We can agree to a three-month rather than a four month extension, which would make the various deadlines: (1) Plaintiff's expert disclosures due on January 23, 2026; (2) Defendant's expert disclosures due on February 23, 2026; (3) Plaintiff's rebuttal experts disclosed by March 9, 2026; (4) discovery related to experts completed by May 11, 2026; (5) completion of fact discovery by April 13, 2026; and (6) dispositive motions filed by May 26, 2026. Please let us know if you agree to this three-month extension of the above deadlines so that we can avoid motions practice.

Best,
Wendy

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