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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Kathleen Hoffard,

10 Plaintiff,

11 v.

12 County of Cochise, et al.,

13 Defendants.  
14

No. CV-20-00243-TUC-SHR

**Stipulated Rule 502 Order**

15  
16 Pursuant to the Parties' stipulation regarding "Joint Electronic Discovery Protocol"  
17 (Doc. 38),

18 **IT IS ORDERED:**

19 (a) **No Waiver by Disclosure.** This order is entered pursuant to Rule 502(d) of the  
20 Federal Rules of Evidence and invokes the protections afforded by that Rule. Each Party  
21 is entitled to decide the appropriate degree of care to exercise in reviewing materials for  
22 privilege, taking into account the volume and sensitivity of the materials, the demands of  
23 the litigation, and the resources that the Party can make available. Irrespective of the care  
24 that is actually exercised in reviewing materials for privilege, subject to the provisions of  
25 this Order, the Court hereby orders pursuant to Rule 502(d) of the Federal Rules of  
26 Evidence that if a party (the "Disclosing Party") discloses information or documents in  
27 connection with the pending litigation that the Disclosing Party thereafter claims to be  
28 privileged or protected by the attorney-client privilege or work product protection

1 (“Protected Information”), the disclosure of that Protected Information will not constitute  
2 or be deemed a waiver or forfeiture—in this or any other action—of any claim of privilege  
3 or work product protection that the Disclosing Party would otherwise be entitled to assert  
4 with respect to the Protected Information and its subject matter.

5       **(b) Notification Requirements; Best Efforts of Receiving Party.** If a Disclosing  
6 Party determines that it has produced upon which it wishes to make a claim of privilege,  
7 the Disclosing Party shall, within fourteen (14) business days of making such  
8 determination, notify counsel of record that received the Protected Information (“the  
9 Receiving Party”), in writing, that it has disclosed that Protected Information without  
10 intending a waiver by the disclosure. The notice shall identify each such document and the  
11 date it was produced. If the producing Party claims that only a portion of a document is  
12 privileged, the producing Party shall provide, along with the notice of the claim of  
13 privilege, a new copy of the document with the allegedly privileged portions redacted. Any  
14 party that complies with this Paragraph will be deemed to have taken reasonable steps to  
15 rectify disclosures of privilege or protected information or materials. Upon such  
16 notification, the Receiving Party must—unless it contests the claim of attorney-client  
17 privilege or work product protection in accordance with paragraph (c)—promptly (i) notify  
18 the Disclosing Party that it will make best efforts to identify and return, sequester or destroy  
19 (or in the case of electronically stored information, delete) the Protected Information and  
20 any reasonably accessible copies it has in accordance with Fed. R. Civ. P. 26(b)(5)(B), and  
21 (ii) provide a certification that it will cease further review, dissemination, and use of the  
22 Protected Information. Within five (5) business days of receipt of the notification from the  
23 Receiving Party, the Disclosing Party must explain as specifically as possible why the  
24 Protected Information is privileged.

25       **(c) Contesting Claim of Privilege or Work Product Protection.** If the Receiving  
26 Party contests the claim of attorney-client privilege or work product protection, the  
27 Receiving Party must—within five (5) business days of receipt of the notice of disclosure—  
28 request a meet and confer among the Parties to seek to resolve the matter through personal

1 consultation and sincere efforts, as required by Local Rule of Civil Procedure 7.2(j). If no  
 2 resolution to the dispute is reached and the Receiving Party continues to dispute a claim of  
 3 privilege asserted under this Order, such Party shall promptly notify the Court of the  
 4 dispute and request a telephonic conference concerning the dispute. If the Court does not  
 5 grant a telephonic conference concerning the dispute, the Receiving Party may file a  
 6 motion compelling disclosure of the information claimed as privileged (“Disclosure  
 7 Motion”). The Disclosure Motion must be filed under seal and must not assert as a ground  
 8 for compelling disclosure the fact or circumstances of the disclosure. Pending resolution  
 9 of the Disclosure Motion, the Receiving Party must not use the challenged information in  
 10 any way or disclose it to any person other than those required by law to be served with a  
 11 copy of the sealed Disclosure Motion.

12 (d) **Identification of Potentially Privileged Information.** If the Receiving Party  
 13 identifies a document that appears on its face or in light of facts known to the Receiving  
 14 Party to be subject to the Disclosing Party’s claim of privilege, the Receiving Party  
 15 identifying the potential claim of privilege is under a good-faith obligation to notify the  
 16 Disclosing Party. Such notification shall not waive the Receiving Party’s ability to  
 17 subsequently challenge any assertion of privilege with respect to the identified document.  
 18 If the Disclosing Party wishes to assert a claim of privilege, it shall provide notice in  
 19 accordance with subparagraph (b), above, within five (5) business days of receiving notice  
 20 from the Receiving Party.

21 (e) **Stipulated Time Periods.** The parties may stipulate to extend the time periods  
 22 set forth in paragraphs (b), (c), and (d).

23 (f) **Attorney’s Ethical Responsibilities.** Nothing in this order overrides any  
 24 attorney’s ethical responsibilities to refrain from examining or disclosing materials that the  
 25 attorney knows or reasonably should know to be privileged and to inform the Disclosing  
 26 Party that such materials have been produced.

27 (g) **Burden of Proving Privilege or Work-Product Protection.** The Disclosing  
 28 Party retains the burden—upon challenge pursuant to paragraph (c)—of establishing the

1 privileged or protected nature of the Protected Information.

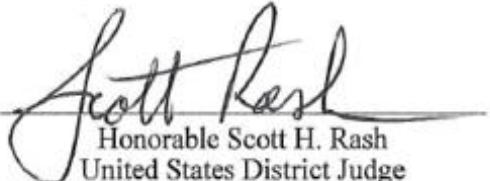
2 (h) **In camera Review.** Nothing in this Order limits the right of any party to petition  
3 the Court for an in camera review of the Protected Information.

4 (i) **Voluntary and Subject Matter Waiver.** This Order does not preclude a party  
5 from voluntarily waiving the attorney-client privilege or work product protection. The  
6 provisions of Federal Rule 502(a) apply when the Disclosing Party uses or indicates that it  
7 may use privileged information produced under this Order to support a claim or defense.

8 (j) **Rule 502(b)(2).** The provisions of Federal Rule of Evidence 502(b)(2) are  
9 inapplicable to the production of Protected Information under this Order.

10 Dated this 27th day of September, 2021.

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Honorable Scott H. Rash  
United States District Judge