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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Kathleen Hoffard,

10 Plaintiff,

11 v.

12 County of Cochise, et al.,

13 Defendants.  
14

No. CV-20-00243-TUC-SHR

**Stipulated Protective Order**

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

18 **IT IS ORDERED:**

19 1. Plaintiff Kathleen Hoffard and Defendants Cochise County, Arizona, and Lisa  
20 Marra, in her official capacity as Director of Cochise County Elections Department (each,  
21 a "Party," and collectively, the "Parties"), by their respective counsel, hereby stipulate  
22 and agree to the entry of this Stipulated Protective Order ("Order").

23 This Order shall apply to all documents, responses to interrogatories, and requests  
24 for admissions, deposition transcripts and any exhibits thereto, and any other information,  
25 documents, objects, or things which have been or will be produced, disclosed or received  
26 by any Party or other Person during pretrial proceedings in this action, pursuant to the  
27 Federal Rules of Civil Procedure, as well as any information, copies, abstracts, digests,  
28 summaries and by-products derived or obtained therefrom. This Order is being entered to

1 facilitate the production, inspection and discovery (collectively, “disclosure”) of  
 2 documents and information among the Parties in this litigation while preserving each  
 3 Party’s rights and privileges with respect to such documents and information.

#### 4 **DEFINITIONS**

5 2. For purposes of this Order,

6 a. “Confidential Information” means any non-public information, or  
 7 portions or contents of any document (including discovery responses, testimony,  
 8 notes, extracts, data, summaries or descriptions of such material, copies,  
 9 transcripts, videos, and electronically stored information) (i) which the Producing  
 10 Party contends and in good faith believes is a trade secret or other confidential or  
 11 proprietary financial or business data, information, plans, or policies, and (ii)  
 12 which counsel for the Producing Party designates as “Confidential,” as defined  
 13 herein, and upon a good faith believe that there is a good cause therefor under  
 14 applicable law. Documents or information produced or disclosed by a Party or a  
 15 non-Party to this action may be designated as Confidential.

16 b. “Person” means any natural person or any legal entity, including, without  
 17 limitation, any business or governmental entity or association.

18 c. “Privileged Material” means any and all documents, communications, or  
 19 other information covered by the attorney-client privilege, work-product  
 20 protection, or any other applicable privilege or protection from disclosure.

21 d. “Producing Party” means the Person that disclosed or produced  
 22 Confidential Information, Protected Health Information, or Privileged Material,  
 23 including such Person’s counsel.

24 e. “Protected health information” (hereinafter “PHI”) is defined by the  
 25 Health Insurance Portability and Accountability Act, 45 C.F.R. § 160.103.

26 f. “Receiving Party” means the Person to whom Confidential Information, PHI, or  
 27 Privileged Material was disclosed or produced, including such Person’s counsel.

28 . . . .

**PROTECTIVE ORDER**

3. The above-captioned litigation is reasonably anticipated to involve the production and disclosure of certain Confidential Information and PHI, which may consist of confidential material within the scope and meaning of Rule 26(c) of the Federal Rules of Civil Procedure. The Parties hereby stipulate and agree to the terms of this Order to protect their respective Confidential Information and PHI from public disclosure.

4. A Party may designate as “Confidential” any information that is of a commercial or personal nature and which is not available to the public, or public record.

5. Confidential Information and PHI may be disclosed only to qualified Persons, defined as (i) counsel of record in this action and their employees or agents to whom it is necessary that the material be disclosed for purposes of this action; (ii) actual or potential testifying and consulting experts; and (iii) a Party and any current or former employees or agents of a Party whom counsel for such Party deems helpful to prepare the case; provided, however, that prior to disclosure to any such authorized persons under subparagraphs (ii) and (iii), such persons have been advised of the terms of this Protective Order, have been given a copy of this Protective Order, and have signed a Protective Order Acknowledgement in the form of Exhibit A, attached hereto, the original of which shall be retained by counsel authorized for the Party employing or retaining that person.

6. Any non-Party to this action who shall be called upon to produce, disclose, or provide documents, written discovery or deposition or other testimony shall be entitled to avail itself of this Order and, by so doing, shall assume the duties and obligations imposed by this Order.

7. Any party, including a third party, that produces documents containing Confidential Information, shall mark the document as “Confidential Information – Subject to Protective Order.” Any party, including a third party, that produces documents containing PHI, shall mark the document as “Confidential Protected Health Information –

1 Subject to Protective Order.” A Producing Party producing Confidential Information or  
2 PHI that belongs to another party or third party is obligated to mark it consistent with this  
3 Protective Order.

4 8. The designation of documents as Confidential Information or PHI shall be made  
5 by placing or fixing on each page of the material, in a manner that will not interfere with  
6 the material’s legibility, the words “Confidential Information – Subject to Protective  
7 Order” or “Confidential Protected Health Information – Subject to Protective Order,”  
8 respectively.

9 9. If a party inadvertently produces Confidential Information or PHI without the  
10 required label, the Producing Party shall inform the Receiving Party in writing of the  
11 specific material at issue immediately upon discovering the inadvertent omission,  
12 accompanied by substitute copies of each document, appropriately labeled. Likewise, if a  
13 Receiving Party contends that Confidential Information or PHI was produced without the  
14 required label, the Receiving Party shall inform the Producing Party in writing of the  
15 specific material at issue upon discovering the failure to label the information. Upon  
16 receipt of notice, all Parties shall treat the material identified in the notice as confidential  
17 unless and until this Court enters an order stating that the document shall not be treated as  
18 Confidential Information or PHI. Copies of mis-labeled documents shall either be  
19 returned to the Producing Party or destroyed.

20 10. Information disclosed at a deposition may be designated by any Party as  
21 Confidential Information or PHI by indicated on the record at the deposition that the  
22 testimony is Confidential Information or PHI and is subject to the provisions of this  
23 Order. If such designation is not made at the time of the deposition, any transcript  
24 containing Confidential Information or PHI may be designated as containing such  
25 information no later than thirty (30) days after the date of the Producing Party’s counsel’s  
26 receipt of the deposition transcript, which designated shall be in writing served on all  
27 parties. Nothing in this paragraph is intended to deprive any Party of the right to attend  
28 any depositions in this case.

1           11. Copies of documents containing Confidential Information or PHI may be  
2 made, or exhibits prepared, by independent copy services, printers, or illustrators for the  
3 purposes of this action, provided that such independent copy services, printers, or  
4 illustrators agree to and sign a Protective Order Acknowledgement in the form of Exhibit  
5 A, attached hereto.

6           12. Nothing in this Order shall prevent a Person from any use of its own  
7 Confidential Information or PHI. Nothing herein shall prevent disclosure beyond the  
8 terms of this Order if the Producing Party consents in writing to such disclosure or if the  
9 Court orders such disclosure. Nor shall this Protective Order prevent or restrict the  
10 disclosure or use of Confidential Information or PHI (i) in the examination or cross-  
11 examination of any Person who is indicated on the document as being an author, source,  
12 or recipient of Confidential Information or PHI, irrespective of which Party produced or  
13 designated the Confidential Information or PHI, or (ii) authorized pursuant to the terms of  
14 any pre-existing agreement between the Producing Party and the Receiving Party.

15           13. A Party shall not be obligated to challenge the propriety of a designation as  
16 Confidential Information or PHI at the time made, and a failure to do so shall not  
17 preclude a subsequent challenge thereto. Upon request by the Receiving Party, the  
18 Producing Party shall have designated in writing within 15 business days of the request  
19 the reason for a confidentiality designation on any of the documents subject to this Order,  
20 for example “Confidential: personal medical information,” or in the alternative provide a  
21 log that designates the bates number and the reason for the claim of confidentiality. In the  
22 event that any Party to this action disagrees at any stage of these proceedings with the  
23 designation of any information as Confidential Information or PHI, the parties shall first  
24 try to resolve such dispute informally. If after a good-faith attempt, the parties fail to  
25 resolve their dispute, the Party objecting to the Confidential Information or PHI  
26 designation (the “Objecting Party”) may follow the procedures applicable to discovery  
27 disputes established by the Court to be relieved of the limitations of this Order with  
28 respect to the document or information in question. The law of the jurisdiction shall

1 govern the burden of persuasion, to the extent applicable, with regard to any challenged  
2 designation. The Objecting Party shall not make any disclosure while a motion or other  
3 request to allow or to bar such disclosure is pending, or while any appeal or request for  
4 review or reconsideration pertaining to such a motion or request is pending.

5 14. In the event that a Party wishes to use any Confidential Information or PHI in  
6 any papers filed in this action, such Party shall seek leave of Court for filing under seal.  
7 Additionally, such party seeking to file under seal shall, within the applicable deadline,  
8 file a redacted, unsealed version of any motion, response or reply if such party is waiting  
9 for a ruling from the Court on filing an unredacted, sealed version of the same document.  
10 Upon failure of the filing party to file Confidential Information or PHI under seal, any  
11 party may request that the Court place the document under seal. The procedures of Local  
12 Rule 5.6 shall be followed.

13 15. This Order shall not prevent any attorney from conveying to any Party-client  
14 their evaluation of Confidential Information or PHI produced or exchanged herein,  
15 provided such persons have signed a Protective Order Acknowledgement in the form of  
16 Exhibit A.

17 16. Nothing in this Order shall be deemed to preclude a Party from seeking and  
18 obtaining such additional protection with respect to any Confidential Information as it  
19 may consider appropriate and necessary.

20 17. All documents and information designated as Confidential Information and  
21 PHI shall be used by the Receiving Party solely for the purpose of trial or preparation for  
22 trial and appeal of this case, or for any alternative dispute resolution proceeding mutually  
23 agreed upon by the parties or in connection with this litigation, and for no other purpose  
24 whatsoever.

25 18. Upon final termination of this action (including all appeals) with respect to any  
26 Party receiving any non-public information through discovery, including without  
27 limitation Confidential Information or PHI, the Receiving Party shall, within ninety (90)  
28 days of such termination) destroy all non-public information obtained through discovery,

1 including without limitation any information designated as Confidential Information or  
2 PHI which is in its possession, except that counsel of record for each Party may retain  
3 pleadings, deposition or hearing transcripts, and exhibits that contain Confidential  
4 Information or PHI. In either event, the Receiving Party shall certify the destruction of all  
5 such information.

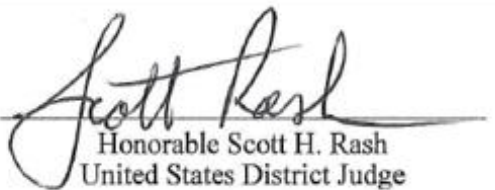
6 19. If any counsel of record distributes copies of material containing Confidential  
7 Information or PHI to any actual or potential testifying and consulting experts, or a Party  
8 and any current or former employees or agents of a Party, all copies, notes, extracts,  
9 summaries, or descriptions of such material shall be returned to that counsel of record at  
10 the completion of the consultation or representation in this action.

11 20. By stipulating to this Protective Order, no Party waives any right it may have  
12 to withhold or redact information protected from disclosure by the attorney-client  
13 privilege or other applicable privilege, the work product doctrine, relevance, or any other  
14 protection, law, or regulation, or to seek appropriate protective orders respecting  
15 documents asserted to be subject to any such privilege, doctrine, protection, law, or  
16 regulation.

17 21. The provisions of this Order shall remain in full force and effect until further  
18 order of this Court.

19 Dated this 27th day of September, 2021.

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Honorable Scott H. Rash  
United States District Judge

**EXHIBIT A****PROTECTIVE ORDER ACKNOWLEDGEMENT**

The undersigned: (i) acknowledges having read the attached [Proposed] Stipulated Protective Order (“Order”) which has been entered by the United States District Court for the District of Arizona in the matter of Kathleen Hoffard. v. Cochise County, Arizona, et al., Case No. 4:20-cv-00243-SHR; (ii) understands the terms and conditions of the attached Order; (iii) agrees to be and acknowledges that he/she/it is contractually bound by and agrees to abide by the terms and conditions of the attached Order and by such other orders as the Court may issue regarding the confidential treatment to be accorded to materials produced in this action; and (iv) agrees to be subject to the jurisdiction of the Court in which this matter is pending for the purpose of any proceedings relating to the performance under, compliance with, or violation of the Order.

I am signing this acknowledgment on \_\_\_\_\_ (date),  
at \_\_\_\_\_ (city), \_\_\_\_\_ (state). If I am executing  
this acknowledgement on behalf of an entity, I represent and warrant that I am authorized  
to do so on behalf of such entity.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(On Behalf Of, if applicable)