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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Carol Coghlan Carter, et al.,
Plaintiffs,
v.
Kevin Washburn, et al.,
Defendants.

No. CV-15-01259-PHX-NVW
ORDER

THIS COURT, having received and considered the Parties Joint Stipulation and Order of Protection of Privileged and Confidential Material (Doc. 132), and good cause appearing,

IT IS HEREBY ORDERED granting the parties’ Stipulation (Doc. 132).
IT IS FURTHER ORDERED as follows:

1. Applicability. This Joint Stipulation and Confidentiality Order (“Order”) binds the parties to this action, as well as any persons or entities that receive documents and/or materials covered by the terms of this Protective Order as authorized herein.

2. Scope. This Order shall govern all documents, information and discovery materials produced in this case or exchanged, whether formally or informally.

3. Definitions. The following definitions are used in this Order:

- a. “Counsel of Record,” means the attorneys of record in this proceeding, their partners and associates, paralegals, clerks, assistants, and other persons employed by such attorneys, all of whom shall be bound by the provisions of this

1 Order.

2 b. "Document" shall have the broadest possible meaning and shall include,
3 without limitation: (i) any "writing," "recording," "photograph," "original,"
4 or "duplicate" as defined in Federal Rule of Evidence 1001; (ii) any and all
5 tangible things upon which any handwriting, typing, printing, drawing,
6 picture, representation, photostatic copy, magnetic or electric impulse, or other
7 form of communication is recorded or produced; (iii) floppy disks, hard disks,
8 compact disks (CD's), digital versatile discs (DVD's), magnetic tape or
9 computer memory; (iv) written discovery responses and the contents thereof,
10 including, without limitation, responses to Interrogatories, Requests for
11 Admissions, and Document Requests; (v) deposition transcripts and their
12 contents; and (vi) any other physical means or medium or recording or storing
13 information.

14 c. "Party," shall mean, in the singular, as well as the plural, any named
15 Plaintiff or Defendant in this action, and shall include any past and present
16 directors, officers, or employees of any party.

17 d. "Person," shall mean, in the singular as well as the plural, any individual,
18 corporation, firm, association, partnership, business trust, governmental body,
19 or any other legal business entity.

20 **4. Protected Parties.** Protected Confidential Documents and Personally
21 Identifying Information, as defined in paragraphs 5 and 6, concerning the following
22 persons shall remain confidential and subject to access, use and release only as authorized
23 by this Order:

24 a. Any named minor child plaintiff in this action and their family;

25 b. Any minor child who may become a member of a plaintiff class in this
26 action and their family; and

27 c. Foster or adoptive families who are or may become a member of a
28 plaintiff class in this action.

1 **5. Personally Identifying Information.** “Personally Identifying Information”
2 means, for the individuals identified in Paragraph 4, the following categories of
3 information:

- 4 a. Their full names;
- 5 b. Their home or other physical addresses;
- 6 c. Their contact information (including a postal, e-mail or Internet protocol
7 address, or telephone or facsimile number);
- 8 d. Their Social Security Numbers;
- 9 e. Photographs, electronic, and other visual images of their faces; and
- 10 f. Any other information, including the first and last names of parents, other
11 relatives, or foster care parents, that, in combination with any other nonpersonally
12 identifying information, would serve to identify the individual.

13 **6. Protected Confidential Documents.** “Protected Confidential Documents”
14 means, for the individuals identified in Paragraph 4, the following categories of
15 documents:

- 16 a. DCS information (as defined by A.R.S. § 8-807 to mean all information
17 DCS gathers during the course of an investigation from the time a file is
18 opened and until it is closed, excluding information that is contained in child
19 welfare agency licensing records);
- 20 b. Court records of juvenile court proceedings, including all such records
21 concerning proceedings related to dependency, foster care placement,
22 termination of parental rights, guardianship, or preadoptive or adoptive
23 placements;
- 24 c. Documents generated by or provided to DCS in connection with
25 dependency, termination of parental rights, guardianship, or adoption
26 proceedings;
- 27 d. Child welfare agency licensing records;
- 28 e. Information that is protected under HIPAA, FERPA, or any other state or

1 federal law, and

2 f. Documents that are designated as Protected Confidential Documents by
3 parties or third-parties producing the information. Any party shall have the right
4 to, in good faith, designate any documents, testimony, or other information
5 derived therefrom as “Protected Confidential Documents.” Such documents
6 must be labeled by the designating party “Protected Confidential Document –
7 Subject to Protective Order.” Placing such a stamp or label on the cover of any
8 multi-page document shall designate all pages of the document as Protected
9 Confidential Documents unless otherwise indicated by the designating party.
10 Documents that are so designated must be ones that the designating party believes,
11 in good faith,

- 12 i. Contain proprietary information, Personally Identifying Information,
13 and/or information in which the Party or third parties have a privacy interest; or
14 ii. Are subject to protection from disclosure, or limitation upon disclosure,
15 under applicable law.

16 **7. Deposition Transcripts.** All deposition transcripts shall initially be treated as
17 Protected Confidential Documents and be included within the terms of this Order without
18 the necessity of so designating. Upon transcription of the deposition, counsel of record
19 shall have twenty (20) calendar days after receipt of the transcript to notify the deposition
20 reporter and other counsel of record in writing of the portions of the transcript to be
21 designated as Protected Confidential Documents. Depositing the written notice in the
22 United States mail within such twenty (20) calendars days shall be deemed timely
23 compliance with this requirement. All other portions, or the entire transcript if no
24 designation is made, shall not be Protected Confidential Documents and shall not be
25 within the terms of this Order. In addition, deposition testimony may be designated to be
26 treated in the transcript as a Protected Confidential Document during the deposition by
27 making the statement to that effect on the record. In that case, the transcript of the
28 designated testimony shall be stamped “Protected Confidential Document – Subject to

1 Protective Order” by the reporter on the pages so designated. The designating party may
2 also direct that the material to designated as a Protected Confidential Document be bound
3 in a separate volume marked “Protected Confidential Document – Subject to Protective
4 Order.” Designating any portion of deposition testimony during the deposition to be
5 treated in the transcript as a Protected Confidential Document shall not preclude a party
6 from thereafter designating additional testimony to be treated as such by serving written
7 notice in accordance herein. All deposition transcripts shall be treated as Protected
8 Confidential Documents until the expiration of the twenty (20) calendar day period set
9 forth herein.

10 **8. Objections to Designation of Material as Protected Confidential**
11 **Documents.**

12 Any party may object to the propriety of designation pursuant to Paragraph 6.e of
13 specific information as “Protected Confidential Document – Subject to Protective Order”
14 by serving a written objection upon the producing party’s counsel. The producing party
15 or its counsel shall thereafter, within ten (10) calendar days, respond to such objection in
16 writing by either: (i) agreeing to remove the designation; or (ii) stating the reasons for
17 such designation. If the objecting party and the producing party are subsequently unable
18 to agree upon the terms and conditions of disclosure for the material(s) in issue, the
19 objecting party may move the Court for an order withdrawing the designation as to the
20 specific designation on which the parties could not agree. Counsel may agree to
21 reasonable extensions of the ten (10) day period, if necessary. On such a motion, the
22 producing party shall have the burden of proving that good cause exists for the
23 designation at issue and that the material is entitled to protection. In the event a motion is
24 filed by the objecting party, the information at issue shall continue to be treated in the
25 manner as designated by the producing party until the Court orders otherwise. A
26 receiving party may challenge a designation at such time as the receiving party deems
27 appropriate.

28 **9. Failure to Designate Protected Confidential Documents.** A party or third

1 party who produces but fails to designate an item as a Protected Confidential Document
2 may later so designate the Confidential Material. Such a later designation shall be made
3 in writing. Upon receipt of such notice, the receiving party shall thereafter treat the
4 Protected Confidential Documents in accordance with the designation. The receiving
5 party shall provide a copy of this Order and written notice of the corrected designation to
6 any third parties who previously received the material.

7 **10. Access to Protected Confidential Documents and Personally Identifying**
8 **Information.**

9 a. All Protected Confidential Documents and Personally Identifying
10 Information shall be treated and maintained in a matter that precludes access by
11 any person or entity not entitled to access under this Order. Protected Confidential
12 Documents and Personally Identifying Information shall be disclosed only to the
13 following persons/entities and in accordance with the other provisions of this
14 Order:

15 i. Counsel and any firm/entity that has filed an appearance on behalf
16 of a party, including their legal, paralegal, secretarial, legal intern, and
17 clerical personnel who are engaged in assisting such counsel in this action;

18 ii. Any investigator, independent outside expert or consultant, and
19 employees and assistants under the control of such investigator, expert or
20 consultant, who is employed or engaged by counsel;

21 iii. Employees, including In-House Counsel, of departments,
22 divisions, bureaus and agencies of the United States or of the State of
23 Arizona that are assisting counsel in this action;

24 iv. Mediators and or discovery referees selected by Counsel of
25 Record on behalf of the parties, or appointed by the Court in this action;

26 v. Any person agreed to by counsel for all parties.

27 vi. Any person who authored or originally received the particular
28 documents;

1 vii. Any court or other reporter or typist recording or transcribing
2 testimony;

3 viii. The Court, its clerk, and court personnel; and

4 ix. Any person designated by the Court in the interests of justice,
5 upon such terms as the Court deems proper.

6 b. Protected Confidential Documents and Personally Identifying
7 Information shall not be disclosed to persons described in Paragraph 10.a.i-v
8 until such persons have been provided with a copy of the Order and have agreed to
9 abide by and comply with the terms and provisions herein by signing a copy of
10 Appendix A to this Order.

11 c. Protected Confidential Documents (and the information contained
12 within) and Personally Identifying Information cannot be shared with any
13 person/entity other than the persons/entities listed in paragraph 10(a)(i)-(ix)
14 unless that person/entity is otherwise authorized by A.R.S. 8-807, federal law,
15 or by the Court in this action to have that information, if at all.

16 d. Any person that may subsequently become party to this action must sign
17 this Order, or a protective order that amends this Order, before such party may
18 be provided Protected Confidential Documents and Personally Identifying
19 Information pursuant to the terms of this Order.

20 **11. Use and Disclosure of Protected Confidential Documents and Protected**
21 **Personally Identifying Information.**

22 a. Subject to the rules of evidence, this Order, and any other orders of the
23 Court, the parties may not append Protected Confidential Documents in a
24 pleading, filing, hearing, trial, or other proceeding in this action without filing
25 under seal. Without filing under seal, the parties may describe information
26 contained in the Protected Confidential Documents so long as the parties do not
27 disclose Protected Personally Identifying Information. In place of an individual's
28 full name, the parties may substitute initials consistent with the requirements of

1 Fed. R. Civ. P. 5.2.

2 b. Protected Confidential Documents and Protected Personally Identifying
3 Information will be kept confidential and not disclosed, including in response to
4 requests under the Freedom of Information Act, 5 U.S.C. § 552, or any other open
5 records law absent good cause shown in this Court or absent a court order
6 requiring disclosure. The party subject to such request for disclosure shall indicate
7 that such documents are subject to nondisclosure pursuant to court order.

8 c. Protected Confidential Documents, the information contained in
9 Protected Confidential Documents, and Protected Personally Identifying
10 Information provided pursuant to this Order may not be used for any purpose
11 other than in this federal action, Case No. 15-CV-1259.

12 **12. Claw-Back.** There shall be no waiver by disclosure. This Stipulation and
13 Order is entered pursuant to Federal Rule of Evidence 502(d). Subject to the provisions
14 of this Order, if a Disclosing Party discloses information in connection with this pending
15 litigation that the Disclosing Party thereafter claims, in good faith, to be privileged or
16 protected, the disclosure of that information will not constitute or be deemed to be a
17 waiver or forfeiture in this action or any other action, of any claim of privilege or
18 protection that the Disclosing Party would otherwise be entitled to assert with respect to
19 that information and its subject matter. The parties agree to the following claw-back
20 procedures for inadvertently disclosed documents:

21 a. For the purposes of this claw-back agreement, an inadvertently
22 disclosed document is a document, material, or information (including but not
23 limited to electronic data) that could have been withheld, in whole or in part,
24 based on a legitimate claim of attorney-client privilege, work-product protection,
25 other applicable privilege, or which contains or reflects the impressions,
26 conclusions, opinions, legal research or theories of legal counsel.

27 b. A party does not waive any claim of privilege as to any inadvertently
28 disclosed document.

1 c. If a party receives or discovers documents, material, or information that
2 the party knows or has any reason to believe constitute an inadvertently
3 disclosed document, the receiving party shall: (1) promptly notify the
4 producing party and immediately refrain from reading the item; (2) use best
5 efforts to promptly and permanently delete electronic files and data and destroy
6 paper documents; and (3) certify in writing to the producing party that the files,
7 data, and documents have been properly deleted or destroyed.

8 d. If a party discovers that it has produced an inadvertently disclosed
9 document, the producing party may notify any other party within 15 calendar days
10 from the date the party becomes aware of the inadvertent disclosure of its claim of
11 privilege pertaining to the inadvertently disclosed document. On receiving this
12 notice, the other party shall: (1) immediately refrain from reading the item; (2)
13 use best efforts to permanently delete electronic files and data and destroy paper
14 documents; and (3) certify in writing to the producing party that the files, data,
15 and documents have been properly deleted or destroyed. If a document is part of
16 a filing with the Court, the party invoking this paragraph will raise the issue with
17 the filing party, and the filing party will either withdraw the document or the
18 parties will agree to brief the issue for the Court, but the filing party shall have no
19 obligation to withdraw the document from the record until the Court resolves the
20 dispute. In no event is a party required to destroy filings with the Court.

21 e. Within 20 calendar days of the date the producing party becomes aware
22 of the disclosure of an inadvertently disclosed document, the producing party shall
23 serve a privilege log on the other parties covering the clawed-back documents,
24 material, or information.

25 f. Subject to the foregoing, if a dispute develops as to whether a privilege
26 exists, all parties shall not disclose, offer, or otherwise use the disputed
27 material in any way, including in these proceedings (other than as necessary to
28 raise the dispute over the document with the court), until

1 the issue is resolved by the parties or the Court.

2 **13. No Waiver.** This Order does not constitute a waiver on any Party's rights to
3 object to discovery on any grounds.

4 **14. Court Governance.** Questions of the protection of Protected Confidential
5 Documents and Protected Personally Identifying Information during trial will be
6 presented to the Court prior to or during trial as each party deems appropriate.

7 **15.Subpoena / Order From Other Court.** If another court or administrative
8 agency subpoenas or orders production of Protected Confidential Documents that a Party
9 has obtained under the terms of this Order, such Party shall promptly notify the
10 designating party of the pendency of the subpoena or order and shall take all reasonable
11 steps not to produce the Protected Confidential Documents until the designating party has
12 had reasonable time to object or otherwise to take reasonable steps to protect the
13 Protected Confidential Documents.

14 **16. Modifications.** Any party may apply to this Court for relief from, enforcement
15 of, and/or modification of this Order, or for additional protective orders. In addition, the
16 named parties, through counsel, may mutually agree to seek a modification of this
17 Protective Order from the Court.

18 **17. Termination.** This Order shall remain in full force and effect until modified,
19 superseded, or terminated by order of the Court, without regard to the conclusion of this
20 litigation or any subsequent appeals. Protected Confidential Documents and Protected
21 Personally Identifying Information in the possession of the parties or any person
22 described in Paragraph 10.a.i-v, including all copies, must either be returned to the
23 providing party or destroyed when this litigation and all subsequent appeals conclude,
24 except as prohibited by state or federal law.

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¶APPENDIX A:

PROTECTIVE ORDER AGREEMENT

I have read the Protective Order issued by the United States District Court for the District of Arizona in *Carter et al. v. Washburn*, 2:15-CV-01259-PHX-NVW, on _____ [date issued]. I understand the terms of the Order, I agree to be fully bound by the terms of the Order unless and until modified by further order of the Court and I hereby submit to the jurisdiction of the United States District Court for the District of Arizona for purposes of enforcing the order.

By: _____

Printed Name: _____

Dated: _____