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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Shawn Jensen, et al.,

10 Plaintiffs,

11 v.

12 David Shinn, et al.,

13 Defendants.  
14

No. CV-12-00601-PHX-ROS

**ORDER**

15 The parties have raised several issues and filed several motions since trial began on  
16 November 1, 2021.

17 In preparation for trial, Defendants noted Plaintiffs intended to use deposition  
18 testimony in their case in chief (Doc. 4090 at 1). But because Plaintiffs had not sought  
19 leave to use deposition testimony in lieu of live witness testimony, the Court ruled Plaintiffs  
20 would not be permitted to use deposition testimony absent “exceptional circumstances” as  
21 reflected in Rule 32(a)(4)(e) (Doc. 4098 at 2). Plaintiffs sought reconsideration of that  
22 order and moved to submit portions of depositions of nine witnesses and seven of ADC’s  
23 30(b)(6) designees (Doc. 4136). During trial, the Court instructed the parties to attempt to  
24 reach an agreement as to the use of deposition testimony. After conferring, the parties  
25 informed the Court they agreed pursuant to Rule 32(a)(3) Plaintiffs may introduce the  
26 depositions of named Defendants Shinn and Gann and the Rule 30(b)(6) designees. The  
27 parties further explained Defendants intended to call the remaining witnesses for which  
28 Plaintiffs sought to substitute deposition testimony except for Dr. Ashley Pelton and Dr.

1 John Wilson and Defendants agreed they would not object to Plaintiffs exceeding the scope  
2 of Defendants' direct testimony to use the witnesses' depositions during cross examination.  
3 Thus, the only remaining depositions at issue are those of Dr. Pelton and Dr. Wilson. The  
4 Court directed Defendants to file a response but held on November 10 that it decided to  
5 allow Plaintiffs to submit their deposition testimony because Defendants did not intend to  
6 call them as witnesses, Plaintiffs bear the burden of proof, and Defendants would suffer no  
7 prejudice should the deposition testimony be permitted. Defendants have now filed a  
8 response arguing that because they have elected not to call Dr. Wilson as one of their  
9 experts his deposition testimony is not relevant. The fact that Defendants no longer wish  
10 to call Dr. Wilson is not dispositive. Plaintiffs will be permitted to use the portions of his  
11 testimony they believe helpful to their case for the reasons previously stated. Thus, the  
12 Court reaffirms the granting of Plaintiffs' motion for reconsideration.<sup>1</sup>

13 Plaintiffs also filed a motion to file a sealed motion in limine (Doc. 4141). The  
14 Court addressed the matter during trial and, as a result, the motion to seal will be denied as  
15 moot.

16 Finally, the Court will grant the pending motions to seal the unredacted versions of  
17 Plaintiffs' experts' declarations (Docs. 4110, 4121, 4131, 4139), exhibits to the Proposed  
18 Final Pretrial Order (Doc. 4117), exhibits to their proposed deposition designations (Doc.  
19 4147), and an exhibit to their objections to Defendants' exhibits (Doc. 4150).

20 **IT IS THEREFORE ORDERED granting** Plaintiffs' Motion for Reconsideration  
21 (Doc. 4136) consistent with the parties' agreement and the Court's decision to allow  
22 Plaintiffs to submit the deposition testimony of Dr. Ashley Pelton and Dr. John Wilson.

23 **IT IS FURTHER ORDERED** Plaintiffs' Motion to File Motion in Limine Under  
24 Seal (Doc. 4141) is **denied as moot**. This Order shall not be sealed.

25 **IT IS FURTHER ORDERED** granting Plaintiffs' Motions to Seal (Docs. 4110,  
26 4117, 4121, 4131, 4139, 4147, 4150).

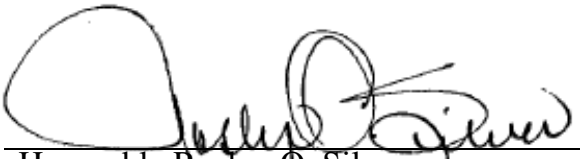
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28 <sup>1</sup> Plaintiffs have designated specific testimony. (Doc. 4146). No later than November 16,  
2021, Defendants must file their objections and/or designations of additional testimony.  
No later than November 17, 2021, Plaintiffs are to file their reply.

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**IT IS FURTHER ORDERED** Motion from Non-Party Bradley Kennedy (Doc. 4129) is **denied**.

**IT IS FURTHER ORDERED** the Clerk of Court must update the caption to reflect that Shawn Jensen is the primary Plaintiff and David Shinn is the primary Defendant in this matter.

Dated this 12th day of November, 2021.

  
Honorable Roslyn O. Silver  
Senior United States District Judge