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13 THE MARLIN COMPANY and DALE ILKO

NOTE CHANGES MADE BY THE COURT.

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 CAROLINE NODA, an individual,

17 Plaintiff,

18 v.

19 THE MARLIN COMPANY, a
20 corporation, DALE ILKO, an
21 individual, and DOES 1 through 75,
22 inclusive,

23 Defendants.

Case No. CV 12-04105 JAK (PLAx)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

24 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve
26 production of confidential, proprietary, or private information for which special
27 protection from public disclosure and from use for any purpose other than
28 prosecuting this litigation may be warranted, including (1) trade secret information
of The Marlin Company; (2) confidential financial information pertaining to a

1 Party; (3) information which, if disclosed could constitute a violation of any third
 2 party's right of privacy or otherwise violates an obligation of confidentiality owed
 3 to a third party; and (4) any other similar proprietary, confidential, or private
 4 information.

5 Accordingly, the parties hereby stipulate to and petition the court to enter the
 6 following Stipulated Protective Order. The parties acknowledge that this Order
 7 does not confer blanket protections on all disclosures or responses to discovery and
 8 that the protection it affords from public disclosure and use extends only to the
 9 limited information or items that are entitled to confidential treatment under the
 10 applicable legal principles. The parties further acknowledge, as set forth in Section
 11 12.3, below, that this Stipulated Protective Order does not entitle them to file

12 confidential information under seal; Civil Local Rule 79-5 set forth the procedures
 13 that must be followed and the standards that will be applied when a party seeks
 14 permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the
 17 designation of information or items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
 19 how it is generated, stored or maintained) or tangible things that qualify for
 20 protection under Federal Rule of Civil Procedure 26(c), including: (1) trade secret
 21 information of The Marlin Company as defined by California Civil Code section
 22 3426.1¹; (2) confidential financial information pertaining to a Party; (3) information
 23 which, if disclosed could constitute a violation of any third party's right of privacy
 24 _____

25 ¹ California Civil Code section 3426.1 provides that trade secret "means
 26 information, including a formula, pattern, compilation, program, device, method,
 27 technique, or process, that: (1) Derives independent economic value, actual or
 28 potential, from not being generally known to the public or to other persons who can
 obtain economic value from its disclosure or use; and (2) Is the subject of efforts
 that are reasonable under the circumstances to maintain its secrecy."

1 or otherwise violates an obligation of confidentiality owed to a third party; and (4)
2 any other similar proprietary, confidential, or private information.

3 2.3 Counsel (without qualifier): Outside Counsel of Record and House
4 Counsel (as well as their support staff).

5 2.4 Designating Party: a Party or Non-Party that designates information
6 or items that it produces in disclosures or in responses to discovery as
7 "CONFIDENTIAL" or that contains any Protected Materials.

8 2.5 Disclosure or Discovery Material: all items or information, regardless
9 of the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced
11 or generated in disclosures or responses to discovery in this matter.

12 2.6 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this action.

15 2.7 House Counsel: attorneys who are employees of a party to this action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.8 Non-Party: any natural person, partnership, corporation, association,
19 or other legal entity not named as a Party to this action.

20 2.9 Outside Counsel of Record: attorneys who are not employees of a
21 party to this action but are retained to represent or advise a party to this action and
22 have appeared in this action on behalf of that party or are affiliated with a law firm
23 which has appeared on behalf of that party.

24 2.10 Party: any party to this action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this action.

1 2.12 Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.13 Protected Material: any Disclosure or Discovery Material that is
6 designated as "CONFIDENTIAL."

7 2.14 Receiving Party: a Party that receives Disclosure or Discovery
8 Material from a Producing Party.

9 3. SCOPE

10 The protections conferred by this Stipulation and Order cover not only
11 Protected Material (as defined above), but also: (1) any information copied or
12 extracted from Protected Material, (2) all copies, excerpts, summaries, or Protected
13 Material, and (3) any testimony, conversations, or presentations by parties or
14 counsel to or in court or in other settings that might reveal Protected Material.
15 However, the protections conferred by this Stipulation and Order do not cover the
16 following information: (a) any information that is in the public domain at the time
17 of disclosure to a Receiving Party (unless the information entered the public
18 domain due to the acts of the Receiving Party) or becomes part of the public
19 domain after its disclosure to a Receiving Party as a result of publication not
20 involving a violation of this Order, including becoming part of the public record
21 through trial or otherwise; and (b) any information known to Ms. Noda prior to the
22 start of her employment with The Marlin Company or obtained by the Receiving
23 Party after the disclosure from a source who obtained the information lawfully and
24 under no obligation of confidentiality to the Designating Party. Any use of
25 Protected Material at trial shall be governed by a separate agreement or order.

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
3 or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
5 including the time limits for filing any motions or applications for extension of time
6 pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each Party or Non-Party that designates information or items for protection under
10 this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate for
12 protection only those parts of material, documents, items, or oral or written
13 communications that qualify – so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (e.g., to unnecessarily encumber or retard the case development process or
19 to impose unnecessary expenses and burdens on other parties) expose the
20 Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must
23 promptly notify all other Parties that it is withdrawing the mistaken designation.

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
25 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
27 under this Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
5 page that contains protected material. If only a portion or portions of the material
6 on a page qualifies for protection, the Producing Party also must clearly identify the
7 protected portion(s) (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents or materials available
9 for inspection need not designate them for protection until after the inspecting Party
10 has indicated which material it would like copied and produced. During the
11 inspection and before the designation, all of the material made available for

12 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, qualify for protection under this
15 Order. Then, before producing the specified documents, the Producing Party must
16 affix the "CONFIDENTIAL" legend to each page that contains Protected Material.
17 If only a portion or portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins).

20 (b) for testimony given in deposition or in other pretrial or trial
21 proceedings, that the Designating Party identify on the record, before the close of
22 the deposition, hearing, or other proceeding, all protected testimony.

23 (c) for information produced in some form other than documentary
24 and for any other tangible items, that the Producing Party affix in a prominent place
25 on the exterior of the container or containers in which the information or item is
26 stored the legend "CONFIDENTIAL." If only a portion or portions of the
27 information or item warrant protection, the Producing Party, to the extent
28 practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.


7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 Designating Party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or
12 delay of the litigation, a Party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of the
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of
23 notice. In conferring, the Challenging Party must explain the basis for its belief that
24 the confidentiality designation was not proper and must give the Designating Party
25 an opportunity to review the designated material, to reconsider the circumstances,
26 and, if no change in designation is offered, to explain the basis for the chosen
27 designation. A Challenging Party may proceed to the next stage of the challenge
28 process only if it has engaged in this meet and confer process first or establishes

1 that the Designating Party is unwilling to participate in the meet and confer process
2 in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Designating Party shall thereafter comply with the Central
5 District's Local Rule 37 within 21 days of the initial notice of challenge or within
6 14 days of the parties agreeing that the meet and confer process will not resolve
7 their dispute, whichever is earlier. If the Parties agree to file the Joint Stipulation
8 required by Local Rule 37 under seal, the Parties may file a stipulation to that effect
9 or the moving party may file an ex parte application making the appropriate
10 request, in conformance with the Central District's Local Rules. Until the court
11 rules on the challenge, all parties shall continue to afford the material in question

12 the level of protection to which it is entitled under the Producing Party's
13 designation. *Good cause for the under seal filing must be shown.* 

14 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Frivolous challenges, and those made for an improper purpose
16 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
17 expose the Challenging Party to sanctions. Unless the Designating Party has
18 waived the confidentiality designation by failing to file a motion to retain
19 confidentiality as described above, all parties shall continue to afford the material
20 in question the level of protection to which it is entitled under the Producing
21 Party's designation until the court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this
25 case only for prosecuting, defending, or attempting to settle this litigation. Such
26 Protected Material may be disclosed only to the categories of persons and under the
27 conditions described in this Order. When the litigation has been terminated, a
28 Receiving Party must comply with the provisions of section 13 below (FINAL

1 DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a
3 location and in a secure manner that ensures that access is limited to the persons
4 authorized under this Order.

5 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by the Designating Party, a
7 Receiving Party may disclose any information or item designated
8 "CONFIDENTIAL" only to:

9 (a) the Receiving Party's Outside Counsel of Record in this action,
10 as well as employees of said Outside Counsel of Record to whom it is reasonably
11 necessary to disclose the information for this litigation and who have signed the
12 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
13 A;

14 (b) the officers, directors, and employees (including House
15 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
16 this litigation and who have signed the "Acknowledgment and Agreement to Be
17 Bound" (Exhibit A);

18 (c) Experts (as defined in this Order) of the Receiving Party to
19 whom disclosure is reasonably necessary for this litigation and who have signed the
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (d) the court and its personnel;

22 (e) court reporters and their staff, professional jury or trial
23 consultants, mock jurors, and Professional Vendors to whom disclosure is
24 reasonably necessary for this litigation and who have signed the "Acknowledgment
25 and Agreement to Be Bound" (Exhibit A);

26 (f) during their depositions, witnesses in the action to whom
27 disclosure is reasonably necessary and who have signed the "Acknowledgment and
28 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating

1 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
2 to depositions that reveal Protected Material must be separately bound by the court
3 reporter and may not be disclosed to anyone except as permitted under this
4 Stipulated Protective Order.

5 (g) the author or recipient of a document containing the information
6 or a custodian or other person who otherwise possessed or knew the information.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
8 IN OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this action as
11 "CONFIDENTIAL," that Party must:

12 (a) promptly notify in writing the Designating Party. Such
13 notification shall include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or
15 order to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Protective Order. Such notification shall include
17 a copy of this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served
21 with the subpoena or court order shall not produce any information designated in
22 this action as "CONFIDENTIAL" before a determination by the court from which
23 the subpoena or order issued, unless the Party has obtained the Designating Party's
24 permission. The Designating Party shall bear the burden and expense of seeking
25 protection in that court of its confidential material – and nothing in these provisions
26 should be construed as authorizing or encouraging a Receiving Party in this action
27 to disobey a lawful directive from another court.

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1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in this action and designated as "CONFIDENTIAL." Such
5 information produced by Non-Parties in connection with this litigation is protected
6 by the remedies and relief provided by this Order. Nothing in these provisions
7 should be construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery
9 request, to produce a Non-Party's confidential information in its possession, and
10 the Party is subject to an agreement with the Non-Party not to produce the Non-
11 Party's confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the
13 Non-Party that some or all of the information requested is subject to a
14 confidentiality agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the
16 Stipulated Protective Order in this litigation, the relevant discovery request(s), and
17 a reasonably specific description of the information requested; and

18 (3) make the information requested available for inspection
19 by the Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from
21 this court within 14 days of receiving the notice and accompanying information, the
22 Receiving Party may produce the Non-Party's confidential information responsive
23 to the discovery request. If the Non-Party timely seeks a protective order, the
24 Receiving Party shall not produce any information in its possession or control that
25 is subject to the confidentiality agreement with the Non-Party before a
26 determination by the court.² Absent a court order to the contrary, the Non-Party

27
28 ² The purpose of this provision is to alert the interested parties to the existence
of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity

1 shall bear the burden and expense of seeking protection in this court of its Protected
2 Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Protected Material to any person or in any circumstance not authorized
6 under this Stipulated Protective Order, the Receiving Party must immediately (a)
7 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
8 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
9 the person or persons to whom unauthorized disclosures were made of all the terms
10 of this Order, and (d) request such person or persons to execute the
11 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit

12 A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Federal Rule of Evidence
21 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
22 of a communication or information covered by the attorney-client privilege or work
23 product protection, the parties may incorporate their agreement in the stipulated
24 protective order submitted to the court.

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28 to protect its confidentiality interests in this court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. If a Receiving Party's request to file Protected Material under seal pursuant to Local Rule 79-5 is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court. *Good cause for the under seal filing must be shown. PLA*

13. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving

1 Party has not retained any copies, abstracts, compilations, summaries or any other
2 format reproducing or capturing any of the Protected Material. Notwithstanding
3 this provision, Counsel are entitled to retain an archival copy of all pleadings,
4 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
5 correspondence, deposition and trial exhibits, expert reports, attorney work product,
6 and consultant and expert work product, even if such materials contain Protected
7 Material. Any such archival copies that contain or constitute Protected Material
8 remain subject to this Protective Order as set forth in Section 4 (DURATION).

9 14. MISCELLANEOUS

10 12.1 Counsel agree to maintain a file of all Certifications (Exhibit A)
11 required by this Agreement. The file containing the Certifications (Exhibit A) and
12 the specific Certifications therein shall not be available for review by opposing
13 counsel absent agreement of the parties or an order of the Arbitrator or Court to this
14 action determining that there is a good faith basis for the Certifications, or any part
15 of them, to be reviewed.

16 12.2. Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 12.3. Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in
21 this Stipulated Protective Order. Similarly, no Party waives any right to object on
22 any ground to use in evidence of any of the material covered by this Protective
23 Order.

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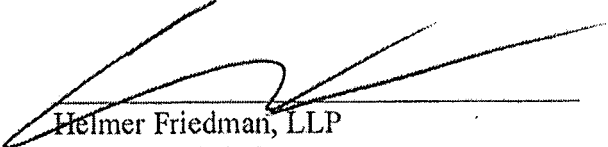
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: 08/20/12



Helmer Friedman, LLP
Andrew H. Friedman
Attorneys for Plaintiff
Caroline Noda

4
5
6
7 DATED: 8/20/12


Fox Rothschild LLP
Tyreen Torner
Attorneys for Defendants
The Marlin Company and Dale Ilko

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12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13
14 DATED: 8/22/12


Hon. Judge John A. Kronstadt
United States District Judge
PAUL L. ABRAMS

U.S. MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of *Caroline Noda v. The Marlin Company, et al.*, Case No. CV
12-04105 JAK (PLAx). I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of _____
[print or type full address and telephone number] as my California agent for service
of process in connection with this action or any proceedings related to enforcement
of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]