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 11 *David Kinney and John Perez and the Proposed Plaintiff Class*

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 In re Capstone Turbine Corporation
 15 Securities Litigation

Case No.: CV 15-8914 DMG (RAOx)

16 **RANDALL G. KAY and**
 17 **ELIZABETH KAY and DAVID**
 18 **KINNEY, JOHN PEREZ**
 19 Individually and on Behalf of All
 20 Others Similarly Situated,
 21 **Plaintiffs,**

STIPULATED PROTECTIVE
ORDER GOVERNING THE
PRODUCTION, EXCHANGE,
AND FILING OF CONFIDENTIAL
MATERIAL

[Discovery Document: Referred to
 Magistrate Judge Rozella A. Oliver]

22 v.
 23 **CAPSTONE TURBINE**
 24 **CORPORATION, DARREN R.**
 25 **JAMISON, and JAYME BROOKS,**
 26 **Defendants**

Judge: Hon. Dolly M. Gee
 Crtrm.: 7-2nd Floor
 Trial Date:
 Time:

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this Action (as defined below) is likely to involve production of
3 confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, Lead Plaintiffs Randall G. Kay and Elizabeth Kay and
6 Plaintiffs David Kinney and John Perez (collectively “Plaintiffs”) and Defendants
7 Capstone Turbine Corporation (“Capstone”); Darren R. Jamison; and Jayme Brooks
8 (together, the “Individual Defendants”)(collectively, the “Parties”) hereby stipulate to
9 and petition the Court to enter the following Stipulated Protective Order. The Parties
10 acknowledge that this Order does not confer blanket protections on all disclosures or
11 responses to discovery and that the protection it affords from public disclosure and use
12 extends only to the limited information or items that are entitled to confidential
13 treatment under the applicable legal principles. The Parties further acknowledge, as set
14 forth in Section 13.3 below, that this Stipulated Protective Order does not entitle them
15 to file confidential information under seal. Local Rule 79-5 sets forth the procedures
16 that must be followed and the standards that will be applied when a party seeks
17 permission from the court to file material under seal.

18 **2. GOOD CAUSE STATEMENT**

19 This action is likely to involve trade secrets and other valuable research,
20 development, commercial, financial, technical and/or proprietary information for which
21 special protection from public disclosure and from use for any purpose other than
22 prosecution of this action is warranted. Such confidential and proprietary materials and
23 information consist of, among other things, confidential business or financial
24 information, information regarding confidential business practices, or other confidential
25 research, development, or commercial information (including information implicating
26 privacy rights of third parties), or which may be privileged or otherwise protected from
27 disclosure under state or federal statutes, court rules, case decisions, or common law.
28 Accordingly, a protective order for such information is justified in this matter to: (1)

1 expedite the flow of information, (2) facilitate the prompt resolution of disputes over
2 confidentiality of discovery materials, (3) adequately protect information the Parties are
3 entitled to keep confidential, including information of a personal, confidential, or
4 sensitive nature regarding any individual, (4) ensure that the Parties are permitted
5 reasonable necessary uses of such material in preparation for and in the conduct of trial,
6 (5) address their handling at the end of the litigation, and (6) serve the ends of justice. It
7 is the intent of the Parties that information will not be designated as confidential for
8 tactical reasons and that nothing be so designated without a good faith belief that it has
9 been maintained in a confidential, non-public manner, and there is good cause why it
10 should not be part of the public record of this case.

11 **3. DEFINITIONS**

12 3.1 Action: *In re Capstone Turbine Corporation Securities Litigation*, Case
13 No. CV 15-8914 DMG (RAOx).

14 3.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 3.3 “CONFIDENTIAL” Information or Items: information (regardless of how
17 it is generated, stored or maintained) or tangible things that qualify for protection under
18 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
19 Statement.

20 3.4 Counsel: (1) attorneys who have been retained to represent a Party to this
21 Action and who have appeared in this Action on behalf of that Party or are affiliated
22 with a law firm which has appeared on behalf of that Party, including support staff; (2)
23 attorneys who are employees of a Party to this Action; and/or (3) attorneys representing
24 an insurer or indemnitor of any Defendant, including the insurer’s or indemnitor’s legal
25 team.

26 3.5 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

1 3.6 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including, among
3 other things, testimony, transcripts, and tangible things), that are produced or generated
4 in disclosures or responses to discovery in this matter.

5 3.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
7 expert witness or as a consultant in this Action. This definition includes any technical
8 experts, discovery experts, and professional jury or trial consultants retained in
9 connection with this Action.

10 3.8 Non-Party: any natural person, partnership, corporation, association, or
11 other legal entity not named as a Party to this action.

12 3.9 Party: any party to this Action, including all of its officers, directors,
13 employees, retained Experts (and their support staffs), and Counsel. For the avoidance
14 of doubt, no putative class member other than a named plaintiff in the above-captioned
15 litigation constitutes a Party to this Action, and no putative class member other than a
16 named plaintiff may be given access to Protected Material.

17 3.10 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 3.11 Professional Vendors: persons or entities that provide litigation support
20 services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
22 their employees and subcontractors.

23 3.12 Protected Material: any Disclosure or Discovery Material that is
24 designated as “CONFIDENTIAL.”

25 3.13 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 **4. SCOPE**

28 The protections conferred by this Stipulation and Order cover not only Protected

1 Material (as defined above), but also: (1) any information copied or extracted from
2 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
3 Material; and (3) any testimony, conversations, or presentations by Parties or their
4 Counsel that might reveal Protected Material.

5 Any use of Protected Material at trial shall be governed by the orders of the trial
6 judge. This Order does not govern the use of Protected Material at trial.

7 **5. DURATION**

8 Even after final disposition of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
10 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
11 later of: (1) dismissal of all claims and defenses in this Action, with or without
12 prejudice; and (2) final judgment herein after the completion and exhaustion of all
13 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
14 for filing any motions or applications for extension of time pursuant to applicable law.

15 **6. DESIGNATING PROTECTED MATERIAL**

16 6.1 Exercise of Restraint and Care in Designating Material for Protection

17 Each Party or Non-Party that designates information or items for protection
18 under this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material, documents, items, or
22 communications for which protection is not warranted are not swept unjustifiably
23 within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that
25 are shown to be clearly unjustified or that have been made for an improper purpose
26 (*e.g.*, to unnecessarily encumber the case development process or to impose
27 unnecessary expenses and burdens on the Receiving Party) may expose the Designating
28 Party to sanctions.

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

4 6.2 Manner and Timing of Designations

5 Except as otherwise provided in this Order (*see, e.g.*, section 6.2(b) below), or as
6 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
7 protection under this Order must be clearly designated before the material is disclosed
8 or produced.

9 Designation in conformity with this Order requires:

10 a) For information in documentary form (*e.g.*, paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" (hereinafter
13 "CONFIDENTIAL legend") to each page that contains protected material, but if
14 documents are produced in native format, that the Producing Party include the word
15 "CONFIDENTIAL" in either the native file name or on the Bates-numbered slip sheet
16 produced with the native file. If only a portion or portions of the material on a page
17 qualifies for protection, the Producing Party also must clearly identify the protected
18 portion(s) (*e.g.*, by making appropriate markings in the margins).

19 b) A Party or Non-Party that makes original documents available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which documents it would like copied and produced. During the inspection
22 and before the designation, all of the material made available for inspection shall be
23 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it
24 wants copied and produced, the Producing Party must determine which documents, or
25 portions thereof, qualify for protection under this Order. Then, before producing the
26 specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to
27 each page that contains Protected Material. If only a portion or portions of the material
28

1 on a page qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).

3 c) For testimony given in depositions, the Designating Party may
4 identify any Disclosure or Discovery Material on the record, before the close of the
5 deposition, as protected testimony. In addition, any Party (or any Non-Party that
6 sponsors, offers, or gives deposition testimony) has up to thirty (30) days after the
7 receipt of the final written transcript to identify specific portions of the testimony as to
8 which “CONFIDENTIAL” protection is sought. The entire transcript of any deposition
9 will be treated as if designated “CONFIDENTIAL” until this thirty (30) day period has
10 elapsed. Only those portions of the testimony that are properly designated for protection
11 within thirty (30) days shall be covered by the provisions of this Order.

12 d) The court reporter must affix on each page containing Protected
13 Material the legend “CONFIDENTIAL” as instructed by the Party or Non-Party
14 offering or sponsoring the witness or presenting the testimony.

15 e) For information produced in some form other than documentary and
16 for any other tangible items, that the Producing Party affix in a prominent place on the
17 exterior of the container or containers in which the information is stored the legend
18 “CONFIDENTIAL.” If only a portion or portions of the information warrants
19 protection, the Producing Party, to the extent practicable, shall identify the protected
20 portion(s).

21 6.3 Inadvertent Failures to Designate

22 If a Producing Party inadvertently fails to designate a Disclosure or Discovery
23 Material as “CONFIDENTIAL,” that Producing Party may subsequently do so in
24 writing and that material shall be deemed “CONFIDENTIAL” from the date of such
25 designation. In such cases, any Receiving Party shall use its best efforts to retrieve the
26 original and all copies of the Disclosure or Discovery Material previously disclosed,
27 summarized, or otherwise communicated, in whole or in part, to any person or entity
28 not entitled under the terms of this Order to receive such confidential information.

1 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s Scheduling
4 Order.

5 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 *et seq.*

7 7.3 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. While a challenge is pending, unless the Designating Party has
9 waived or withdrawn the confidentiality designation, all Parties shall continue to afford
10 the material in question the level of protection to which it is entitled under the
11 Producing Party’s designation until the Court rules on the challenge.

12 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 8.1 Basic Principles

14 A Receiving Party may use Protected Material that is disclosed or produced by
15 another Party or by a Non-Party in connection with this Action only for prosecuting,
16 defending, or attempting to settle this Action. Such Protected Material may be disclosed
17 only to the categories of persons and under the conditions described in this Order.
18 When the Action has been terminated, a Receiving Party must comply with the
19 provisions of section 14 below. Protected Material must be stored and maintained by a
20 Receiving Party at a location and in a secure manner that ensures that access is limited
21 to the persons authorized under this Order.

22 8.2 Disclosure of “CONFIDENTIAL” Information or Items

23 Unless otherwise ordered by the Court or permitted in writing by the Designating
24 Party, a Receiving Party may disclose any information or item designated
25 “CONFIDENTIAL” only to:

- 26 a) the Receiving Party’s Counsel in this Action, as well as employees
27 of said Counsel, to whom it is reasonably necessary to disclose the information for this
28 Action;

- 1 b) the officers, directors, and employees (including in-house counsel)
2 of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- 3 c) the counsel representing insurer or indemnitor of any Defendant,
4 including the insurer's or indemnitor's legal team;
- 5 d) Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 "Acknowledgment and Agreement to Be Bound" attached hereto as Exhibit A
- 8 e) the court and its personnel;
- 9 f) court reporters and their staff;
- 10 g) professional jury or trial consultants, mock jurors, and Professional
11 Vendors to whom disclosure is reasonably necessary for this Action and who have
12 signed Exhibit A;
- 13 h) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information;
- 15 i) during their depositions, witnesses, and attorneys for witnesses, in
16 the Action to whom disclosure is reasonably necessary provided: (1) the deposing party
17 requests that the witness sign Exhibit A; and (2) they will not be permitted to keep any
18 Protected Material. Pages of transcribed deposition testimony or exhibits to depositions
19 that reveal Protected Material must be separately bound by the court reporter and may
20 not be disclosed to anyone except as permitted under this Stipulated Protective Order;
21 and
- 22 j) any mediator or settlement officer, and their supporting personnel,
23 mutually agreed upon by any of the Parties engaged in settlement discussions.
- 24 Prior to the use of any Protected Material at a hearing to be held in open court, Counsel
25 who desires to use such Protected Material shall take reasonable steps to afford Counsel
26 for the Designating Party a reasonable opportunity to object to the disclosure in open
27 court of such Protected Material.
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1 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this Action as Protected
5 Material that Party must: (a) promptly notify in writing the Designating Party. Such
6 notification shall include a copy of the subpoena or court order; (b) promptly notify in
7 writing the party who caused the subpoena or order to issue in the other litigation that
8 some or all of the material covered by the subpoena or order is subject to this Protective
9 Order, providing a copy of this Stipulated Protective Order; and (c) cooperate with
10 respect to all reasonable procedures sought to be pursued by the Designating Party
11 whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the
13 subpoena or court order shall not produce any information designated in this action as
14 “CONFIDENTIAL” before a determination by the court from which the subpoena or
15 order issued, unless the Party has obtained the Designating Party’s permission. The
16 Designating Party shall bear the burden and expense of seeking protection in that court
17 of its confidential material and nothing in these provisions should be construed as
18 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
19 directive from another court.

20 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
21 **PRODUCED IN THIS LITIGATION**

22 The terms of this Order are applicable to information produced by a Non-Party in
23 this Action and designated as “CONFIDENTIAL.” Such information produced by Non-
24 Parties in connection with this litigation is protected by the remedies and relief
25 provided by this Order. Nothing in these provisions should be construed as prohibiting
26 a Non-Party from seeking additional protections.

27 In the event that a Party is required, by a valid discovery request, to produce a
28 Non-Party’s confidential information in its possession, and the Party is subject to an

1 agreement with the Non-Party not to produce the Non-Party’s confidential information,
2 then the Party shall:

3 a) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party;

6 b) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 c) make the information requested available for inspection by the Non-
10 Party, if requested.

11 If the Non-Party fails to seek a protective order from this court within 14 days of
12 receiving the notice and accompanying information, the Receiving Party may produce
13 the Non-Party’s confidential information responsive to the discovery request. If the
14 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
15 information in its possession or control that is subject to the confidentiality agreement
16 with the Non-Party before a determination by the court. Absent a court order to the
17 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
18 court of its Protected Material.

19 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
21 Protected Material to any person or in any circumstance not authorized under this
22 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
23 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
24 all unauthorized copies of the Protected Material, (c) inform the person or persons to
25 whom unauthorized disclosures were made of all the terms of this Order, and (d)
26 request such person or persons to execute the “Acknowledgment and Agreement to Be
27 Bound” (Exhibit A).

28 ///

1 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced Disclosure or Discovery Material is subject to a claim of
5 privilege or other protection, the obligations of the Receiving Parties are those set forth
6 in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rules of Evidence
7 502(d) and (e), the Parties agree that the inadvertent disclosure or production of
8 documents protected by the attorney-client privilege, work-product protection, or other
9 privileges or protections will not constitute a waiver of the privilege or protection by
10 the Designating Party in this Action or any other federal or state proceeding.

11 **13. MISCELLANEOUS**

12 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.

14 13.2 Right to Assert Other Objections. By stipulating to the entry of this
15 Protective Order no Party waives any right it otherwise would have to object to
16 disclosing or producing any information or item on any ground not addressed in this
17 Stipulated Protective Order. Similarly, no Party waives any right to object on any
18 ground to use in evidence of any of the material covered by this Protective Order.

19 13.3 Filing Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with this Local Rule 79-5.

21 13.4 Party's Own Use. This Order has no effect upon, and shall not apply to,
22 the Parties' use of their own documents for any purpose. Nothing herein shall impose
23 any restrictions on the use or disclosure by a party of documents, materials or
24 information designated as Protected Material that has been generated or obtained
25 lawfully by that Party independently of these proceedings.

26 13.5 Control of Documents. Counsel for the Parties shall make reasonable
27 efforts to prevent unauthorized or inadvertent disclosure of Protected Material. Counsel
28 shall maintain the originals of the forms signed by persons acknowledging their

1 obligations under this Order for a period of three years after the final disposition of
2 these proceedings.

3 13.6 All Disclosure or Discovery Material to be used only for this Action. All
4 Disclosure or Discovery Material, other than Disclosure or Discovery Material that is
5 publicly available, must be used by the Receiving Party solely for the purpose of this
6 Action. Disclosure or Discovery Material produced to a Party or Parties, or their
7 Counsel, shall not be used by any Party, or their Counsel, in any other litigation, or for
8 any purpose other than the prosecution or defense of this Action.

9 **14. FINAL DISPOSITION**

10 Within 60 days after the final disposition of this Action, as defined in paragraph
11 5, each Receiving Party must return all Protected Material to the Producing Party or
12 destroy such material. As used in this subdivision, “all Protected Material” includes all
13 copies, abstracts, compilations, summaries, and any other format reproducing or
14 capturing any of the Protected Material. Whether the Protected Material is returned or
15 destroyed, the Receiving Party must submit a written certification to the Producing
16 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
17 deadline that: (1) identifies (by category, where appropriate) all the Protected Material
18 that was returned or destroyed; and (2) affirms that the Receiving Party has not retained
19 any copies, abstracts, compilations, summaries or any other format reproducing or
20 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
21 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
22 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
23 expert reports, attorney work product, and consultant and expert work product, even if
24 such materials contain Protected Material. Any such archival copies that contain or
25 constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 5 above.

27 Any violation of this Order may be punished by any and all appropriate measures
28 including, without limitation, contempt proceedings and/or monetary sanctions.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

[Signatures on following page]

1 DATED: May 23, 2018

GLANCY PRONGAY & MURRAY LLP

2
3 By: /s/ Casey E. Sadler

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12 *Attorneys for Lead Plaintiffs Randall G. Kay and*
13 *Elizabeth Kay and Plaintiffs David Kinney and*
14 *John Perez and the Proposed Plaintiff Class*

15 DATED: May 23, 2018

WILSON SONSINI GOODRICH & ROSATI,
Professional Corporation

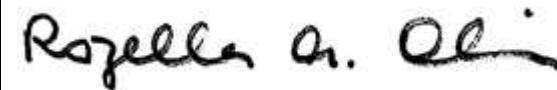
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Attorneys for Defendants Capstone Turbine
Corporation, Darren R. Jamison, and Jayme
Brooks

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: May 24, 2018



Honorable Rozella A. Oliver
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Stipulated Protective Order that was issued by the United
7 States District Court for the Central District of California on _____ in the case
8 of *In re Capstone Turbine Corp. Sec. Litig.*, Case No.: CV 15-8914-DMG (RAOx). I
9 agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the provisions
14 of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [print or type full name] of _____
19 _____ [print or type full address and telephone number] as my
20 California agent for service of process in connection with this action or any proceedings
21 related to enforcement of this Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____