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10 **UNITED STATES DISTRICT COURT**
 11
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 GOLD VALUE INTERNATIONAL
14 TEXTILE, INC.,

15 Plaintiff,

16 vs.

17 LUCKY BRAND DUNGAREES, LLC; *et*
18 *al.*,

19 Defendants.
20
21

Case No.: 2:16-cv-01253-TJH(SSx)
Honorable Terry J. Hatter Presiding
Referred to Honorable Suzanne H. Segal

DISCOVERY MATTER

PROTECTIVE ORDER

22
23
24
25 On stipulation of the Parties, the Court enters a Protective Order in this matter as follows:

26 1. A. PURPOSES AND LIMITATIONS

27 Discovery in this action is likely to involve production of confidential,
28 proprietary, or private information for which special protection from public disclosure

1 and from use for any purpose other than prosecuting this litigation may be warranted.
2 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
3 Stipulated Protective Order. The parties acknowledge that this Order does not confer
4 blanket protections on all disclosures or responses to discovery and that the protection it
5 affords from public disclosure and use extends only to the limited information or items
6 that are entitled to confidential treatment under the applicable legal principles. The
7 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
8 Protective Order does not entitle them to file confidential information under seal; Civil
9 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
10 will be applied when a party seeks permission from the court to file material under seal.

11 **B. GOOD CAUSE STATEMENT**

12 This action is likely to involve trade secrets, customer and pricing lists and other
13 valuable research, development, commercial, financial, technical and/or proprietary
14 information for which special protection from public disclosure and from use for any
15 purpose other than prosecution of this action is warranted. Such confidential and
16 proprietary materials and information consist of, among other things, confidential
17 business or financial information, information regarding confidential business practices,
18 or other confidential research, development, or commercial information (including
19 information implicating privacy rights of third parties), information otherwise generally
20 unavailable to the public, or which may be privileged or otherwise protected from
21 disclosure under state or federal statutes, court rules, case decisions, or common law.
22 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
23 disputes over confidentiality of discovery materials, to adequately protect information
24 the parties are entitled to keep confidential, to ensure that the parties are permitted
25 reasonable necessary uses of such material in preparation for and in the conduct of trial,
26 to address their handling at the end of the litigation, and serve the ends of justice, a
27 protective order for such information is justified in this matter. It is the intent of the
28 parties that information will not be designated as confidential for tactical reasons and

1 that nothing be so designated without a good faith belief that it has been maintained in a
2 confidential, non-public manner, and there is good cause why it should not be part of
3 the public record of this case.

4 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

5 The parties further acknowledge, as set forth in Section 12.3, below, that this
6 Stipulated Protective Order does not entitle them to file confidential information under
7 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
8 standards that will be applied when a party seeks permission from the court to file
9 material under seal.

10 There is a strong presumption that the public has a right of access to judicial
11 proceedings and records in civil cases. In connection with non-dispositive motions,
12 good cause must be shown to support a filing under seal. See *Kamakana v. City and*
13 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
14 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,
15 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
16 cause showing), and a specific showing of good cause or compelling reasons with
17 proper evidentiary support and legal justification, must be made with respect to
18 Protected Material that a party seeks to file under seal. The parties' mere designation of
19 Disclosure or Discovery Material as CONFIDENTIAL does not—without the
20 submission of competent evidence by declaration, establishing that the material sought
21 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
22 constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial, then
24 compelling reasons, not only good cause, for the sealing must be shown, and the relief
25 sought shall be narrowly tailored to serve the specific interest to be protected. See
26 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item
27 or type of information, document, or thing sought to be filed or introduced under seal in
28 connection with a dispositive motion or trial, the party seeking protection must

1 articulate compelling reasons, supported by specific facts and legal justification, for the
2 requested sealing order. Again, competent evidence supporting the application to file
3 documents under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise protectable in its
5 entirety will not be filed under seal if the confidential portions can be redacted. If
6 documents can be redacted, then a redacted version for public viewing, omitting only
7 the confidential, privileged, or otherwise protectable portions of the document, shall be
8 filed. Any application that seeks to file documents under seal in their entirety should
9 include an explanation of why redaction is not feasible.

10
11 2. DEFINITIONS

12 2.1 Action: *Gold Value International Textiles, Inc. v. Lucky Brand Dungarees,*
13 *LLC; et al.*, Case No. 16-CV-01253 TJH (SSx).

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.3 “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 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
24 or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including, among
27 other things, testimony, transcripts, and tangible things), that are produced or generated
28 in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 Information or Items: extremely sensitive “CONFIDENTIAL” Information or Items,
6 the disclosure of which to another Party or Non-Party would create a substantial risk of
7 serious harm that could not be avoided by less restrictive means..

8 2.9 House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.10 Non-Party: any natural person, partnership, corporation, association or
12 other legal entity not named as a Party to this action.

13 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
14 this Action but are retained to represent or advise a party to this Action and have
15 appeared in this Action on behalf of that party or are affiliated with a law firm which
16 has appeared on behalf of that party, and includes support staff.

17 2.12 Party: any party to this Action, including all of its officers, directors,
18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

21 2.14 Professional Vendors: persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
24 their employees and subcontractors.

25 2.15 Protected Material: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY.”

28

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3
4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only Protected
6 Material (as defined above), but also (1) any information copied or extracted from
7 Protected Material; (2) all copies, excerpts, summaries or compilations of Protected
8 Material; and (3) any testimony, conversations, or presentations by Parties or their
9 Counsel that might reveal Protected Material.

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

12
13 4. DURATION

14 Once a case proceeds to trial, information that was designated as
15 CONFIDENTIAL or maintained pursuant to this protective order used or introduced as
16 an exhibit at trial becomes public and will be presumptively available to all members of
17 the public, including the press, unless compelling reasons supported by specific factual
18 findings to proceed otherwise are made to the trial judge in advance of the trial. See
19 *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
20 documents produced in discovery from “compelling reasons” standard when merits-
21 related documents are part of court record). Accordingly, the terms of this protective
22 order do not extend beyond the commencement of the trial.

23
24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.
26 Each Party or Non-Party that designated information or items for protection under this
27 Order must take care to limit any such designation to specific material that qualifies
28 under the appropriate standards. The Designating Party must designate for protection

1 only those parts of material, documents, items, or oral or written communications that
2 qualify so that other portions of the material, documents, items, or communications for
3 which protection is not warranted are not swept unjustifiably within the ambit of this
4 Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that
6 are shown to be clearly unjustified or that have been made for an improper purpose
7 (e.g., to unnecessarily encumber the case development process or to impose
8 unnecessary expenses and burdens on other parties) may expose the Designating Party
9 to sanctions.

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

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
15 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
16 must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents,
19 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
20 Producing Party affix at a minimum, the legend "CONFIDENTIAL" or "HIGHLY
21 CONFIDENTIAL -- ATTORNEYS' EYES ONLY" (hereinafter "CONFIDENTIAL"
22 legend or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY legend"), to
23 each page that contains protected material. If only a portion of the material on a page
24 qualifies for protection, the Producing Party also must clearly identify the protected
25 portion(s) (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents available for inspection
27 need not designate them for protection until after the inspecting Party has indicated
28 which documents it would like copied and produced. During the inspection and before

1 the designation, all of the material made available for inspection shall be deemed
2 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
3 copied and produced, the Producing Party must determine which documents, or portions
4 thereof, qualify for protection under this Order. Then, before producing the specified
5 documents, the Producing Party must affix the “CONFIDENTIAL legend,” or
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY legend” to each page that
7 contains Protected Material. If only a portion of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
9 by making appropriate markings in the margins).

10 (b) for testimony given in depositions that the Designating Party identifies the
11 Disclosure or Discovery Material on the record, before the close of the deposition all
12 protected testimony.

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

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive the
21 Designating Party’s right to secure protection under this Order for such material. Upon
22 timely correction of a designation, the Receiving Party must make reasonable efforts to
23 assure that the material is treated in accordance with the provisions of this Order.

24
25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s Scheduling
28 Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
5 to harass or impose unnecessary expenses and burdens on other parties) may expose the
6 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
7 the confidentiality designation, all parties shall continue to afford the material in
8 question the level of protection to which it is entitled under the Producing Party’s
9 designation until the Court rules on the challenge.

10
11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 Action only for prosecuting, defending or attempting to settle this Action. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the Action has been terminated, a Receiving
17 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
23 may disclose any information or item designated “CONFIDENTIAL” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to
26 disclose the information for this Action;

27 (b) the officers, directors, and employees (including House Counsel) of the
28 Receiving Party to whom disclosure is reasonably necessary for this Action;

1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
2 is reasonably necessary for this Action and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
7 to whom disclosure is reasonably necessary for this Action and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action
12 to whom disclosure is reasonably necessary provided: (1) the deposing party requests
13 that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be
14 permitted to keep any confidential information unless they sign the “Acknowledgment
15 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
16 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
17 depositions that reveal Protected Material may be separately bound by the court reporter
18 and may not be disclosed to anyone except as permitted under this Stipulated Protective
19 Order; and

20 (i) any mediator or settlement officer, and their supporting personnel, mutually
21 agreed upon by any of the parties engaged in settlement discussions.

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
23 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
24 writing by the Designating Party, a Receiving Party may disclose any information or
25 item designated “CONFIDENTIAL” only to:

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

1 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure
2 is reasonably necessary for this Action and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);

4 (c) the court and its personnel;

5 (d) private court reporters and their staff to whom disclosure is reasonably
6 necessary for this Action and who have signed the “Acknowledgment and Agreement to
7 Be Bound” (Exhibit A);

8 (e) professional jury or trial consultants, mock jurors, and Professional Vendors
9 to whom disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information; and

13 (g) any mediator or settlement officer, and their supporting personnel, mutually
14 agreed upon by any of the parties engaged in settlement discussions.

15
16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation that
19 compels disclosure of any information or items designated in this Action as
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY,”
21 that Party must:

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

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or
26 order is subject to this Protective Order. Such notification shall include a copy of this
27 Stipulated Protective Order; and
28

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

3 If the Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”
6 before a determination by the court from which the subpoena or order issued, unless the
7 Party has obtained the Designating Party’s permission. The Designating Party shall
8 bear the burden and expense of seeking protection in that court of its confidential
9 material and nothing in these provisions should be construed as authorizing or
10 encouraging a Receiving Party in this Action to disobey a lawful directive from another
11 court.

12
13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
14 IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-
16 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by
18 Non-Parties in connection with this litigation is protected by the remedies and relief
19 provided by this Order. Nothing in these provisions should be construed as prohibiting
20 a Non-Party from seeking additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to produce
22 a Non-Party’s confidential information in its possession, and the Party is subject to an
23 agreement with the Non-Party not to produce the Non-Party’s confidential information,
24 then the Party shall:

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

28

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

4 (3) make the information requested available for inspection by the Non-
5 Party, if requested.

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

14
15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24
25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other protection, the

1 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without prior
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
5 parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted to
8 the court.

9
10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order, no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to use in evidence of any of the material covered by this Protective Order.

18 12.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
20 only be filed under seal pursuant to a court order authorizing the sealing of the specific
21 Protected Material at issue. If a Party's request to file Protected Material under seal is
22 denied by the court, then the Receiving Party may file the information in the public
23 record unless otherwise instructed by the court.

24
25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in paragraph 4, within 60
27 days of a written request by the Designating Party, each Receiving Party must return all
28 Protected Material to the Producing Party or destroy such material. As used in this

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
6 have read in its entirety and understand the Stipulated Protective Order that was issued
7 by the United States District Court for the Central District of California on
8 _____[date] in the case of *Gold Value International Textiles, Inc. v. Lucky*
9 *Brand Dungarees, LLC; et al.*, Case No. 16-CV-01253 TJH (SSx). I agree to comply
10 with and to be bound by all the terms of this Stipulated Protective Order and I
11 understand and acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
13 manner any information or item that is subject to this Stipulated Protective Order to any
14 person or entity except in strict compliance with the provisions of this Order.

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

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____