

1 FAEGRE BAKER DANIELS LLP
 2 Tarifa B. Laddon (SBN 240419)
 3 1990 S. Bundy Dr., Suite 620
 4 Los Angeles, CA 90025
 Telephone: 310-500-2126
 Fax: 310-500-2091

5 FAEGRE BAKER DANIELS LLP
 6 R. Trevor Carter (*pro hac vice*)
 7 Andrew M. McCoy (*pro hac vice*)
 8 Trenton B. Morton (*pro hac vice*)
 9 Reid E. Dodge (*pro hac vice*)
 300 N. Meridian St., Suite 2700
 Indianapolis, IN 46204
 Telephone: 317-237-0300
 Fax: 317-237-1000

10
 11 Attorneys for Plaintiffs,
 12 INTEX RECREATION CORP. and
 INTEX MARKETING LTD.

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION

16
 17 In Re: Intex Recreation Corp., et al.

Lead Case No.: LA CV-16-03300-JAK (Ex)

18 Intex Recreation Corp.,
 19 Plaintiff,

Consolidated Case No.:
 LA CV16-03483-JAK (Ex)
 LA CV16-03950 JAK (Ex)

20 v.

21 Bestway (USA), Inc., et al.
 22 Defendants.

**STIPULATED MODIFIED
 PROTECTIVE ORDER FOR
 PATENT CASES ASSIGNED TO
 JUDGE JOHN A. KRONSTADT**

23
 24
 25
 26
 27
 28

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary or
3 private information requiring special protection from public disclosure and from
4 use for any purpose other than this litigation. Thus, the Court enters this Protective
5 Order. This Order does not confer blanket protections on all disclosures or
6 responses to discovery, and the protection it gives from public disclosure and use
7 extends only to the specific material entitled to confidential treatment under the
8 applicable legal principles. This Order does not automatically authorize the filing
9 under seal of material designated under this Order. Instead, the parties must comply
10 with Local Rule 79-5 and the Court's Guide to Electronically Filing Under-Seal
11 Documents in Civil Cases if they seek to file anything under seal. This Order does
12 not govern the use at trial of material designated under this Order.

13 **2. DESIGNATING PROTECTED MATERIAL**

14 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
15 information or items for protection under this Order as "CONFIDENTIAL" or
16 "HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY" (a "designator") must
17 only designate specific material that qualifies under the appropriate standards. To
18 the extent practicable, only those parts of documents, items or oral or written
19 communications that require protection shall be designated. Designations with a
20 higher confidentiality level when a lower level would suffice are prohibited. Mass,
21 indiscriminate, or routinized designations are prohibited. Unjustified designations
22 expose the designator to sanctions, including the Court's striking all confidentiality
23 designations made by that designator. Designation under this Order is allowed only
24 if the designation is necessary to protect material that, if disclosed to persons not
25 authorized to view it, would cause competitive or other recognized harm. Material
26 may not be designated if it has been made public, or if designation is otherwise
27 unnecessary to protect a secrecy interest. If a designator learns that information or
28 items that it designated for protection do not qualify for protection at all or do not

1 qualify for the level of protection initially asserted, that designator must promptly
2 notify all parties that it is withdrawing the mistaken designation.

3 **2.2 Manner and Timing of Designations.** Designation under this Order
4 requires the designator to affix the applicable legend (“CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that
6 contains protected material. For testimony given in deposition or other proceeding,
7 the designator shall specify all protected testimony and the level of protection being
8 asserted. It may make that designation during the deposition or proceeding, or may
9 invoke, on the record or by written notice to all parties on or before the next
10 business day, a right to have up to 21 days from the deposition or proceeding to
11 make its designation.

12 **2.2.1** A party or non-party that makes original documents or materials
13 available for inspection need not designate them for protection until after the
14 inspecting party has identified which material it would like copied and
15 produced. During the inspection and before the designation, all material shall
16 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.
17 After the inspecting party has identified the documents it wants copied and
18 produced, the producing party must designate the documents, or portions
19 thereof, that qualify for protection under this Order.

20 **2.2.2** Parties shall give advance notice if they expect a deposition or
21 other proceeding to include designated material so that the other parties can
22 ensure that only authorized individuals are present at those proceedings when
23 such material is disclosed or used. The use of a document as an exhibit at a
24 deposition shall not in any way affect its designation. Transcripts containing
25 designated material shall have a legend on the title page noting the presence
26 of designated material, and the title page shall be followed by a list of all
27 pages (including line numbers as appropriate) that have been designated, and
28 the level of protection being asserted. The designator shall inform the court

1 reporter of these requirements. Any transcript that is prepared before the
2 expiration of the 21-day period for designation shall be treated during that
3 period as if it had been designated HIGHLY CONFIDENTIAL –
4 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of
5 the 21-day period, the transcript shall be treated only as actually designated.

6 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
7 designate does not, standing alone, waive protection under this Order. Upon timely
8 assertion or correction of a designation, all recipients must make reasonable efforts
9 to ensure that the material is treated according to this Order.

10 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 All challenges to confidentiality designations shall proceed under Local Rule
12 37-1 through Local Rule 37-4. It shall be the designator’s burden to establish the
13 challenged designation is appropriate.

14 **4. ACCESS TO DESIGNATED MATERIAL**

15 **4.1 Basic Principles.** A receiving party may use designated material only
16 for this litigation. Designated material may be disclosed only to the categories of
17 persons and under the conditions described in this Order.

18 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
19 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
20 designator, a receiving party may disclose any material designated
21 CONFIDENTIAL only to:

22 **4.2.1** The receiving party’s outside counsel of record in this action and
23 employees or independent contractors of outside counsel of record (e.g.,
24 photocopiers, document production vendors, etc.) to whom disclosure is
25 reasonably necessary;

26 **4.2.2** No more than three (3) representatives of the receiving party who
27 are officers, directors, and/or employees of the receiving party and to whom
28 disclosure is reasonably necessary, and who have signed the Agreement to

1 Be Bound (Exhibit A, the signed copy of which shall be provided to the
2 producing party before disclosure);

3 4.2.3 Outside experts or consultants retained by the receiving party or
4 its outside counsel of record and to whom disclosure is reasonably necessary,
5 provided that: (1) such expert or consultant has signed the Agreement to Be
6 Bound (Exhibit A) and the signed copy of which has been provided to the
7 producing party prior to disclosure; (2) such expert or consultant is not a
8 current officer, director, or employee of a Party or of a competitor of a Party,
9 nor, at the time of retention, expected or anticipated to become an officer,
10 director, or employee of a Party or of a competitor of a Party at any time
11 within two years of retention; and (3) no unresolved objections to such
12 disclosure exist after proper notice has been given to all Parties as set forth in
13 Paragraph 4.4.2, below;

14 4.2.4 The Court and its personnel;

15 4.2.5 Outside court reporters and their staff, to whom disclosure is
16 reasonably necessary;

17 4.2.6 During their depositions and at hearings, witnesses in the action
18 to whom disclosure is reasonably necessary);

19 4.2.7 The author or recipient of a document containing the material, or
20 a custodian or other person who otherwise possessed or knew the
21 information;

22 4.2.8 Graphics, interpretation, translation, design, and/or trial
23 consulting personnel, who have signed the Agreement to Be Bound (Exhibit
24 A, the signed copy of which shall be provided to the producing party before
25 disclosure);

26 4.2.9 Mock jurors who have signed an undertaking or agreement
27 agreeing not to publicly disclose CONFIDENTIAL material and to keep any
28 information concerning such material confidential;

1 **4.2.10** Any mediator who is assigned to hear this matter, and his or her
2 staff, subject to their agreement to maintain confidentiality to the same
3 degree as required by this Protective Order; and

4 **4.2.11** Any other person with the prior written consent of the
5 producing party.

6 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
7 **ONLY Material Without Further Approval.** Unless permitted in writing by the
8 designator, a receiving party may disclose material designated HIGHLY
9 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

10 **4.3.1** The receiving party’s outside counsel of record in this action and
11 employees or independent contractors of outside counsel of record (e.g.,
12 photocopiers, document production vendors, etc.) to whom it is reasonably
13 necessary to disclose the information;

14 **4.3.2** Outside experts or consultants retained by the receiving party or
15 its outside counsel of record and to whom disclosure is reasonably necessary,
16 provided that: (1) such expert or consultant has signed the Agreement to Be
17 Bound (Exhibit A) and the signed copy of which has been provided to the
18 producing party prior to disclosure; (2) such expert or consultant is not a
19 current officer, director, or employee of a Party or of a competitor of a Party,
20 nor, at the time of retention, expected or anticipated to become an officer,
21 director, or employee of a Party or of a competitor of a Party at any time
22 within two years of retention; (3) such expert or consultant is not involved in
23 competitive decision-making, as defined by *U.S. Steel v. United States*, 730
24 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of
25 a Party; and (4) no unresolved objections to such disclosure exist after proper
26 notice has been given to all Parties as set forth in Paragraph 4.4.2, below;

27 **4.3.3** The Court and its personnel;

28

1 **4.3.4** Outside court reporters and their staff, professional jury or trial
2 consultants, and professional vendors to whom disclosure is reasonably
3 necessary, and who have signed the Agreement to Be Bound (Exhibit A, the
4 signed copy of which shall be provided to the producing party before
5 disclosure);

6 **4.3.5** The author or recipient of a document containing the material, or
7 a custodian or other person who otherwise possessed or knew the
8 information;

9 **4.3.6** Graphics, interpretation, translation, design, and/or trial
10 consulting personnel, who have signed the Agreement to Be Bound (Exhibit
11 A, the signed copy of which shall be provided to the producing party before
12 disclosure);

13 **4.3.7** Any mediator who is assigned to hear this matter, and his or her
14 staff, subject to their agreement to maintain confidentiality to the same
15 degree as required by this Protective Order; and

16 **4.3.8** Any other person with the prior written consent of the producing
17 party.

18 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
19 **CONFIDENTIAL – ATTORNEY EYES ONLY Material.** Unless agreed to in
20 writing by the designator:

21 **4.4.1 Notice of Disclosure**

22 **4.4.1.1** Prior to disclosing any protected material to any
23 person described in Paragraphs 4.2.3 or 4.3.2 (hereinafter the
24 “Person”), the party seeking to disclose such information will provide
25 the producing party with written notice that includes: (i) the name of
26 the Person; (ii) the present employer and title of the Person; (iii) an
27 identification of the Person’s current employment and consulting
28 relationships, and past relationships within the last ten (10) years,

1 including relationships through entities owned or controlled by the
2 Person, relating to the design, development, or patenting of inflatable
3 products and/or to the acquisition of intellectual property assets
4 relating to inflatable products; (iv) an up-to-date curriculum vitae of
5 the Person; and (v) a list of the cases in which the Person has testified
6 at deposition or trial within the last five (5) years. The party seeking to
7 disclose protected material will provide such other information
8 regarding the Person's professional activities reasonably requested by
9 the producing party for it to evaluate whether good cause exists to
10 object to the disclosure of protected material to the outside expert or
11 consultant. If the Person believes any of the information in this section
12 is subject to a confidentiality obligation to a third party, then the
13 Person should provide whatever information the Person believes can
14 be disclosed without violating any confidentiality agreements, and the
15 party seeking to disclosing the information to the Person shall be
16 available to meet and confer with the designator regarding any such
17 confidentiality obligations.

18 **4.4.1.2** Within five (5) business days of receipt of the
19 disclosure of the Person, the producing party or parties may object in
20 writing to the Person for good cause. In the absence of an objection at
21 the end of the five (5) business-day period, the Person will be deemed
22 approved under this Protective Order. There will be no disclosure of
23 protected material to the Person prior to expiration of this five (5)
24 business-day period. If the producing party objects to disclosure to the
25 Person within such five (5) business-day period, the parties will meet
26 and confer via telephone or in person within five (5) business days
27 following the objection and attempt in good faith to resolve the dispute
28 on an informal basis. If the dispute is not resolved, the party objecting

1 to the disclosure will have five (5) business days from the date of the
2 meet and confer to seek relief from the Court. It shall be the objecting
3 party's burden to demonstrate it has good cause to object. If relief is
4 not sought from the Court within that time, the objection will be
5 deemed withdrawn. If relief is sought, designated materials will not be
6 disclosed to the Person in question until the Court resolves the
7 objection.

8 **4.4.1.3** For purposes of this section, "good cause" will
9 include an objectively reasonable concern that the Person will,
10 advertently or inadvertently, use or disclose discovery materials in a
11 way or ways that are inconsistent with the provisions contained in this
12 Order.

13 **4.4.1.4** Prior to receiving any protected material under this
14 Order, the Person must sign the Agreement to Be Bound (Exhibit A,
15 the signed copy of which shall be provided to the producing party
16 before disclosure).

17 **4.4.1.5** Only upon a material omission of information
18 required by Paragraph 4.4.1.1 that would result in serious prejudice or
19 business injury to a party who did not initially object to access by that
20 Person may the non-objecting party later object to continued access by
21 that Person. Any such later objection must be made in writing within
22 three (3) business days of learning of the material omission of
23 information. If such an objection is made, the Parties will meet and
24 confer via telephone or in person within three (3) business days
25 following the objection and attempt in good faith to resolve the dispute
26 informally. If the dispute is not resolved, the Party objecting to the
27 disclosure will have three (3) business days from the date of the meet
28 and confer to seek relief from the Court. The designated Person may

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

continue to have access to information that was provided to such Person prior to the date of the objection. If a later objection is made, no further protected material will be disclosed to the Person until the Court resolves the matter or the producing party withdraws its objection. Notwithstanding the foregoing, if the producing party fails to move for a protective order within three (3) business days after the meet and confer, further protected material may thereafter be provided to the Person. If a later objection is made within a month of any deadline involving the Person to whom protected material is not able to be shown as a result of the objection, the parties agree to work together in good faith to extend such deadline to permit time for the Court to rule on the objection and/or the Person (e.g., expert) to be replaced.

4.4.2 All challenges to objections from the designator shall proceed under Local Rule 37-1 through Local Rule 37-4.

5. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

5.1 Subpoenas and Court Orders. This Order in no way excuses noncompliance with a lawful subpoena or court order. The purpose of the duties described in this section is to alert the interested parties to the existence of this Order and to give the designator an opportunity to protect its confidentiality interests in the court where the subpoena or order issued.

5.2 Notification Requirement. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items received by that party in this action and designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY that party must do the following.

1 **5.2.1** Promptly notify the designator in writing. Such notification shall
2 include a copy of the subpoena or court order.

3 **5.2.2** Promptly notify in writing the party who caused the subpoena or
4 order to issue in the other litigation that some or all of the material covered
5 by the subpoena or order is subject to this Order. Such notification shall
6 include a copy of this Order.

7 **5.2.3** Cooperate with all reasonable procedures sought by the
8 designator whose material may be affected.

9 **5.3 Wait For Resolution of Protective Order.** If the designator promptly
10 seeks a protective order, the party served with the subpoena or court order shall not
11 produce any information designated in this action as CONFIDENTIAL or HIGHLY
12 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the
13 court where the subpoena or order issued, unless the party has obtained the
14 designator's permission. The designator shall bear the burden and expense of
15 seeking protection of its confidential material in that court.

16 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED**
17 **MATERIAL**

18 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
19 designated material to any person or in any circumstance not authorized under this
20 Order, it must immediately (1) notify in writing the designator of the unauthorized
21 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
22 designated material, (3) inform the person or persons to whom unauthorized
23 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
24 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

25 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR**
26 **OTHERWISE PROTECTED MATERIAL**

27 When a producing party gives notice that certain inadvertently produced
28 material is subject to the attorney-client privilege, work-product protection, or any

1 other applicable privilege, immunity, or protection, the obligations of the receiving
2 parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not
3 intended to modify whatever procedure may be established in an e-discovery order
4 that provides for production without prior privilege review pursuant to Fed. R.
5 Evid. 502(d) and (e).

6 The inadvertent production of material subject to a claim of privilege or other
7 protection, despite the producing party's reasonable efforts to prescreen such
8 material prior to production, will not waive the applicable privilege and/or
9 protection if the producing party requests return of the inadvertently produced
10 material after the learning of its inadvertent production.

11 Upon a request from any producing party who has inadvertently produced
12 material it believes is privileged and/or protected, the receiving party will
13 immediately return the protected material and all copies to the producing party,
14 except for any pages containing privileged markings by the receiving party, which
15 the receiving party will instead destroy and certify such destruction to the
16 producing party.

17 Nothing written here will prevent the receiving party from preparing a record
18 for its own use containing the date, author, addresses, and topic of the inadvertently
19 produced material and such other information as is reasonably necessary to identify
20 that material and describe its nature to the Court in any motion to compel
21 production of the inadvertently produced material.

22 **8. FILING UNDER SEAL**

23 Without written permission from the designator or a Court order, a party may
24 not file in the public record in this action any designated material. A party seeking
25 to file under seal any designated material must comply with Local Rule 79-5 and
26 the Court's Guide to Electronically Filing Under-Seal Documents in Civil Cases
27 with respect to the filing of under seal documents. Filings may be made under seal
28 only pursuant to a court order authorizing the sealing of the specific material at

1 issue. The fact that a document has been designated under this Order is insufficient
2 to justify filing under seal. Instead, parties must explain the basis for confidentiality
3 of each document sought to be filed under seal. Because a party other than the
4 designator will often be seeking to file designated material, cooperation between
5 the parties in preparing, and in reducing the number and extent of, requests for
6 under seal filing is essential. Accordingly, counsel are ordered to meet and confer in
7 person or by telephone at least seven (7) calendar days prior to the filing of an
8 application wherein the basis for the sealing is that it has been deemed confidential
9 by the other party. Not later than two (2) calendar days after the meet and confer
10 process, the opposing party shall confirm whether such information shall be
11 designated as confidential or whether it can be made available to the public. Such
12 an application shall contain the dates and method by which the parties met and
13 conferred otherwise it will be denied without prejudice to an amended application
14 being filed after counsel have completed this process. If a *receiving party's* request
15 to file designated material under seal pursuant to Local Rule 79-5.1 is denied by the
16 Court, then the receiving party *may file the material in the public record* unless (1)
17 *the designator* seeks reconsideration within four (4) days of the denial, or (2) as
18 otherwise instructed by the Court.

19 **9. PROSECUTION BAR**

20 Except as otherwise set forth herein, the Parties agree that individuals who receive
21 information or material pursuant to Sections 4.2.2 and 4.3.1 shall not now, or for a
22 period of two (2) years after the final disposition or settlement of this action
23 (including appeals and petitions for review), be, directly or indirectly, engaged in
24 any of the following activities relating to inflatable air beds or inflatable spas: (i)
25 prosecuting patent applications, (ii) patent reexamination proceedings, or (iii) patent
26 reissue proceedings. The parties, however, agree that the foregoing restrictions do
27 not apply to *Inter partes* reexamination or review ("IPR") proceedings, or post-
28 grant review proceedings (PGR).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. FINAL DISPOSITION

Within 60 days after the final disposition of this action, each party shall return all designated material to the designator or destroy such material, including all copies, abstracts, compilations, summaries and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the designator by the 60-day deadline that (1) identifies (by category, where appropriate) all the designated material that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain designated material. Any such archival copies remain subject to this Order.

So stipulated and agreed on January 18, 2017.

FAEGRE BAKER DANIELS LLP

By: /s/ Andrew M. McCoy

TARIFA B. LADDON
R. TREVOR CARTER
ANDREW M. MCCOY
TRENTON B. MORTON
REID E. DODGE

Attorneys For Plaintiffs,
INTEX RECREATION CORP. and INTEX
MARKETING LTD.

MCDERMOTT WILL & EMERY LLP

By: /s/ Krista Vink Venegas

Eric W. Hagen
Michael Chu
Krista L. Vink Venegas

Attorneys For Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION

I attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the content of this filing and have authorized the filing.

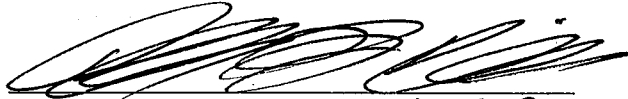
Dated: January 20, 2017

/s/ Andrew M. McCoy

The Parties have jointly submitted the foregoing proposed Stipulated Modified Protective Order to the Court for approval. The Court, having considered the proposed Stipulated Modified Protective Order, finds that it should be, and hereby is, ENTERED in this case.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: *1/23/17*


~~Judge John A. Kronstadt~~ *CHARLES F. EICK*
UNITED STATES DISTRICT JUDGE
MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 *Intex Recreation Corp. v. Bestway (USA), Inc., et al.*, Lead Case No. 2:16-cv-3300-JAK, Consolidated Case Nos. LA CV16-03483-JAK and LA CV16-03950-JAK. 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 for 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 sworn and signed: _____

Printed name: _____

Signature: _____