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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 BELL SPORTS, INC., a California
11 corporation,

12 Plaintiff,

13 v.

14 ASPEN SPECIALTY INSURANCE
15 COMPANY, a North Dakota
16 Corporation, and DOES 1-100, inclusive,

17 Defendant.

Case No.: 2:16-cv-08409-CAS-FFM

(Consolidated for discovery purposes
with Case No. 2:15-cv-06234)

**PROTECTIVE ORDER and FRE
502(d) ORDER**

Complaint filed: September 29, 2016

*Referred for all discovery matters to
Hon. Frederick F. Mumm*

18
19 **A. PURPOSES AND LIMITATIONS**

20 Discovery in this action is likely to involve production of confidential, proprietary,
21 or private information for which special protection from public disclosure and from use
22 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
23 parties hereby stipulate to and petition the Court to enter the following Stipulated
24 Protective Order. The parties acknowledge that this Order does not confer blanket
25 protections on all disclosures or responses to discovery and that the protection it affords
26 from public disclosure and use extends only to the limited information or items that are
27 entitled to confidential treatment under the applicable legal principles. The parties further
28 acknowledge, as set forth in Section N.3., below, that this Stipulated Protective Order

1 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
2 sets forth the procedures that must be followed and the standards that will be applied
3 when a party seeks permission from the court to file material under seal.

4 **B. GOOD CAUSE STATEMENT**

5 This action is likely to involve trade secrets and other valuable research,
6 development, commercial, financial, technical and/or proprietary information for which
7 special protection from public disclosure and from use for any purpose other than
8 prosecution of this action is warranted. Such confidential and proprietary materials and
9 information consist of, among other things, confidential insurance claim information,
10 information regarding confidential business practices, and sensitive information related to
11 ongoing underlying litigation, or information which may be privileged or otherwise
12 protected from disclosure under state or federal statutes, court rules, case decisions, or
13 common law. Such information may also include “protected health information,” as that
14 phrase is defined in 45 C.F.R. § 160.103, that is subject to protection under the Health
15 Insurance Portability and Accountability Act of 1996 (“HIPAA”).

16 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
17 of disputes over confidentiality of discovery materials, to adequately protect information
18 the parties are entitled to keep confidential, to ensure that the parties are permitted
19 reasonable necessary uses of such material in preparation for and in the conduct of trial,
20 to address their handling at the end of the litigation, and serve the ends of justice, a
21 protective order for such information is justified in this matter. It is the intent of the
22 parties that information will not be designated as confidential for tactical reasons and that
23 nothing be so designated without a good faith belief that it has been maintained in a
24 confidential, non-public manner, and there is good cause why it should not be part of the
25 public record of this case.

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28 **C. DEFINITIONS**

1 The terms in this Protective Order are defined as follows:

2 1. **Action**: this pending federal law suit.

3 2. **Challenging Party**: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 3. **“CONFIDENTIAL” Information or Items**: information (regardless of
6 how it is generated, stored or maintained) or tangible things that qualify for protection
7 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
8 Statement.

9 4. **Counsel**: Outside Counsel of Record and House Counsel (including their
10 support staff).

11 5. **Designating Party**: a Party or Non-Party that designates information or
12 items produced by any source in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 6. **Disclosure or Discovery Material**: all items or information, regardless of
15 the medium or manner in which it is generated, stored, or maintained (including, among
16 other things, testimony, transcripts, and tangible things), that are produced or generated in
17 disclosures or responses to discovery in this matter.

18 7. **Expert**: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
20 expert witness or as a consultant in this Action.

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

23 9. **Legend**. “Legend” means the following mark (or its substantial equivalent):

24 “CONFIDENTIAL: Subject to Protective Order – United States
25 District Court for the Central District of California, Case No.
26 2:16-cv-08409”

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

3 11. **Outside Counsel of Record**: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which has
6 appeared on behalf of that party, and includes support staff.

7 12. **Party**: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (including their
9 support staffs).

10 13. **Producing Party**: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

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

16 15. **Protected Material**: any Disclosure or Discovery Material that is designated
17 as “CONFIDENTIAL.”

18 16. **Receiving Party**: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 **D. SCOPE**

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

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

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1 **E. DURATION**

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

9 **F. DESIGNATING PROTECTED MATERIAL**

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

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

24 2. Manner and Timing of Designations. Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section F.2.a. below), or as otherwise stipulated or
26 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
27 must be clearly so designated before the material is disclosed or produced.

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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 proceedings),
4 that the Producing Party affix at a minimum, the Legend, to each page that contains
5 protected material. If only a portion or portions of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
7 by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents available for inspection need
9 not designate them for protection until after the inspecting Party has indicated which
10 documents it would like copied and produced. During the inspection and before the
11 designation, all of the material made available for inspection shall be deemed
12 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
13 copied and produced, the Producing Party must determine which documents, or portions
14 thereof, qualify for protection under this Order. Then, before producing the specified
15 documents, the Producing Party must affix the Legend to each page that contains
16 Protected Material. If only a portion or portions of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
18 by making appropriate markings in the margins).

19 Any Documents containing "protected health information," as that phrase is
20 defined in 45 C.F.R. § 160.103, that is subject to protection under HIPAA shall be
21 considered as HIPAA Protected Material, subject to the protection of this Protective
22 Order, whether each page is marked with the Legend or not. A Party wishing to
23 designate "protected health information" should label the Documents as "HIPAA
24 Protected Material" and may do so (i) in the manner provided at paragraphs F.2.a. above;
25 (ii) by notifying all other Parties to this litigation in writing that a defined category of
26 Documents may contain "protected health information," which written notice shall result
27 in all documents within the identified category being treated as HIPAA Protected
28 Material, subject to protection of this Protective Order; or (iii) by affixing the Legend to

1 the exterior of the deposition transcript, non-paper medium, or other file that contains a
2 defined category of documents that the Producing Party intends to designate as HIPAA
3 Protected Material. The Producing Party has the sole obligation to designate Documents
4 or categories of Documents as containing "protected health information."

5 b. for testimony given in depositions that the Designating Party
6 identifies the Disclosure or Discovery Material on the record, before the close of the
7 deposition all protected testimony.

8 c. for information produced in some form other than documentary and
9 for any other tangible items, that the Producing Party affix in a prominent place on the
10 exterior of the container or containers in which the information is stored the Legend. If
11 only a portion or portions of the information warrants protection, the Producing Party, to
12 the extent practicable, shall identify the protected portion(s).

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

18 **G. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 1. Timing of Challenges. Any Party or Non-Party may challenge a designation
20 of confidentiality at any time that is consistent with the Court's Scheduling Order.

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

23 3. Burden. The burden of persuasion in any such challenge proceeding shall be
24 on the Designating Party. Frivolous challenges, and those made for an improper purpose
25 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose
26 the Challenging Party to sanctions. Unless the Designating Party has waived or
27 withdrawn the confidentiality designation, all parties shall continue to afford the material

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1 in question the level of protection to which it is entitled under the Producing Party's
2 designation until the Court rules on the challenge.

3 **H. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 1. Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this Action
6 only for prosecuting, defending, or attempting to settle this Action. Such Protected
7 Material may be disclosed only to the categories of persons and under the conditions
8 described in this Order. When the Action has been terminated, a Receiving Party must
9 comply with the provisions of Section N. below (FINAL DISPOSITION).

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

13 3. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
15 may disclose any information or item designated "CONFIDENTIAL" only to:

16 a. the Receiving Party's Outside Counsel of Record in this Action, as
17 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
18 to disclose the information for this Action;

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

21 c. Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this Action and who have signed the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 d. the court and its personnel;

25 e. court reporters and their staff;

26 f. professional jury or trial consultants, mock jurors, and Professional
27 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
28 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 g. the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information;

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

12 i. any mediator or settlement officer, and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions; and

14 j. reinsurers, retrocessionaires, accountants, regulators, or auditors to
15 whom the Parties have a contractual, statutory, or regulatory obligation to report.

16 **I. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

18 1. If a Party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this Action as
20 “CONFIDENTIAL,” that Party must:

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

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

27 c. cooperate with respect to all reasonable procedures sought to be
28 pursued by the Designating Party whose Protected Material may be affected.

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

9 **J. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
10 **PRODUCED IN THIS ACTION**

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

16 2. In the event that a Party is required, by a valid discovery request, to produce
17 a Non-Party’s confidential information in its possession, and the Party is subject to an
18 agreement with the Non-Party not to produce the Non-Party’s confidential information,
19 then the Party shall:

20 a. promptly notify in writing the Requesting Party and the Non-Party
21 that some or all of the information requested is subject to a confidentiality agreement
22 with a Non-Party;

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

26 c. make the information requested available for inspection by the Non-
27 Party, if requested.

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

9 **K. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18 **L. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

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

1 **M. NONWAIVER BY DISCLOSURE**

2 **1. Scope of Non-Waiver by Disclosure Provisions**

3 A. Up to and through the later of (1) thirty days (30) after the entry of
4 this Order with respect to documents and electronically stored information (ESI)
5 produced prior to entry of this Order; and (2) thirty days (30) after the date of production
6 for documents and ESI produced after entry of this Order, the production of documents
7 and ESI in this case, whether inadvertent or otherwise, shall be without prejudice to and
8 shall not waive, for purposes of this case or any other federal or state proceeding, any
9 attorney-client privilege or work product protection that otherwise would apply.

10 B. For periods after those described in paragraph 1.A above, the
11 disclosure of a communication or information covered by the attorney-client privilege or
12 work-product protection does not operate as a waiver in a federal or state proceeding if:
13 (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took
14 reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps
15 to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26
16 (b)(5)(B).

17 **2. Notification Requirements; Best Efforts of Receiving Party.**

18 A Disclosing Party must promptly notify the party receiving the Protected
19 Information (“the Receiving Party”), in writing, that it has disclosed Protected
20 Information without intending a waiver by the disclosure. Upon such notification, the
21 Receiving Party must - unless it contests the claim of attorney-client privilege or work
22 product protection in accordance with paragraph 3 - promptly (i) notify the Disclosing
23 Party that it will make best efforts to identify and return, sequester or destroy (or in the
24 case of electronically stored information, delete) the Protected Information and any
25 reasonably accessible copies it has and (ii) provide a certification that it will cease further
26 review, dissemination, and use of the Protected Information. Within ten business days of

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1 receipt of the notification from the Receiving Party, the Disclosing Party must explain as
2 specifically as possible why the Protected Information is privileged.

3 **3. Contesting Claim of Privilege or Work Product Protection.**

4 If the Receiving Party contests the claim of attorney-client privilege or work
5 product protection, the Receiving Party must - within twenty eight days of receipt of the
6 notice of disclosure - move the Court for an Order compelling disclosure of the
7 information claimed as unprotected (a “Disclosure Motion”). The Disclosure Motion
8 must be filed under seal and must not assert as a ground for compelling disclosure the
9 fact or circumstances of the disclosure. Pending resolution of the Disclosure Motion, the
10 Receiving Party must not use the challenged information in any way or disclose it to any
11 person other than those required by law to be served with a copy of the sealed Disclosure
12 Motion.

13 **4. Stipulated Time Periods.**

14 The parties may stipulate to extend the time periods set forth in paragraphs 2 and 3.

15 **5. Attorney’s Ethical Responsibilities.**

16 Nothing in this order overrides any attorney’s ethical responsibilities to refrain
17 from examining or disclosing materials that the attorney knows or reasonably should
18 know to be privileged and to inform the Disclosing Party that such materials have been
19 produced.

20 **6. Burden of Proving Privilege or Work-Product Protection.**

21 The Disclosing Party retains the burden - upon challenge pursuant to paragraph 3 -
22 of establishing the privileged or protected nature of the Protected Information.

23 **7. In camera Review.**

24 Nothing in this Order limits the right of any party to petition the Court for an in
25 camera review of the Protected Information.

26 **8. Voluntary and Subject Matter Waiver.**

27 This Order does not preclude a party from voluntarily waiving the attorney-client
28 privilege or work product protection. The provisions of Federal Rule 502(a) apply when

1 the Disclosing Party uses or indicates that it may use information produced under this
2 Order to support a claim or defense.

3 **9. Rule 502(b)(2).**

4 The provisions of Federal Rule of Evidence 502(b)(2) are inapplicable to the
5 production of Protected Information under this Order.

6 **N. MISCELLANEOUS**

7 1. Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

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

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

20 **O. FINAL DISPOSITION**

21 After the final disposition of this Action, as defined in Section E, within 90 days of
22 a written request by the Designating Party, each Receiving Party must return all Protected
23 Material to the Producing Party or destroy such material. As used in this subdivision, "all
24 Protected Material" includes all copies, abstracts, compilations, summaries, and any other
25 format reproducing or capturing any of the Protected Material. Whether the Protected
26 Material is returned or destroyed, the Receiving Party must submit a written certification
27 to the Producing Party (and, if not the same person or entity, to the Designating Party) by
28 the 90 day deadline that (1) identifies (by category, where appropriate) all the Protected

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

10 **P. VIOLATIONS**

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

13
14 IT IS SO ORDERED.

15 Dated: February 28, 2017

16 /S/FREDERICK F. MUMM
17 Hon. Frederick F. Mumm
18 United States Magistrate Judge
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