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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

TURN KEY WINE BRANDS LLC,

Plaintiff,

v.

CUSTOMVINE CORP.; PENROSE
 HILL, LIMITED; TIME, INC.; KEVIN
 BOYER; L18 WINES, LLC; L18
 HOLDINGS, INC.; R B WINE
 ASSOCIATES, LLC; A W DIRECT,
 LLC; SPELLETICH FAMILY, INC.;
 GREGG & GREGG, INC.; PLATA
 WINE PARTNERS, LLC; and
 DOES 1-10, inclusive,

Defendants.

CUSTOMVINE CORP. and
 PENROSE HILL, LIMITED,

Counterclaimants,

v.

TURN KEY WINE BRANDS LLC,

Counterdefendant.

Case No.: 2:16-cv-09088-RGK-AFM

**~~[PROPOSED]~~ PROTECTIVE
 ORDER REGARDING
 CONFIDENTIAL INFORMATION**

**[Discovery Document: Referred to
 Magistrate Judge Alexander F.
 MacKinnon]**

Judge: Hon. R. Gary Klausner

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1 Plaintiff Turn Key Wine Brands LLC and Defendants CustomVine Corp,
2 Penrose Hill, Limited, Time, Inc., Kevin Boyer, L18 Wines, LLC, and L18
3 Holdings, Inc., by and through their respective counsel, acknowledge that the
4 discovery and pre-trial phase of this action is likely to involve the disclosure of
5 trade secrets and/or other confidential and proprietary business, technical or
6 financial information. Therefore, the parties hereby stipulate that the Court may
7 enter the following Stipulated Protective Order¹ pursuant to Fed. R. Civ. P. 26(c).

8
9 **1. A. PURPOSES AND LIMITATIONS**

10 Discovery in this action is likely to involve production of confidential,
11 proprietary or private information for which special protection from public
12 disclosure and from use for any purpose other than prosecuting this litigation may
13 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
14 enter the following Stipulated Protective Order. The parties acknowledge that this
15 Order does not confer blanket protections on all disclosures or responses to
16 discovery and that the protection it affords from public disclosure and use extends
17 only to the limited information or items that are entitled to confidential treatment
18 under the applicable legal principles.

19
20 **B. GOOD CAUSE STATEMENT**

21 This action is likely to involve trade secrets, customer and pricing lists and
22 other valuable research, development, commercial, financial, technical and/or
23 proprietary information for which special protection from public disclosure and
24 from use for any purpose other than prosecution of this action is warranted. Such
25 confidential and proprietary materials and information consist of, among other
26 things, confidential business or financial information, information regarding
27

28 ¹ This Stipulated Protective Order is based substantially on the model protective
order provided under Magistrate Judge Alexander F. MacKinnon's Procedures.

1 confidential business practices, or other confidential research, development, or
2 commercial information (including information implicating privacy rights of third
3 parties), information otherwise generally unavailable to the public, or which may be
4 privileged or otherwise protected from disclosure under state or federal statutes,
5 court rules, case decisions, or common law. Accordingly, to expedite the flow of
6 information, to facilitate the prompt resolution of disputes over confidentiality of
7 discovery materials, to adequately protect information the parties are entitled to
8 keep confidential, to ensure that the parties are permitted reasonable necessary uses
9 of such material in preparation for and in the conduct of trial, to address their
10 handling at the end of the litigation, and serve the ends of justice, a protective order
11 for such information is justified in this matter. It is the intent of the parties that
12 information will not be designated as confidential for tactical reasons and that
13 nothing be so designated without a good faith belief that it has been maintained in a
14 confidential, non-public manner, and there is good cause why it should not be part
15 of the public record of this case.

16 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING**
17 **UNDER SEAL**
18

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

24 There is a strong presumption that the public has a right of access to judicial
25 proceedings and records in civil cases. In connection with non-dispositive motions,
26 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
27 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
28 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics*,

1 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
2 require good cause showing), and a specific showing of good cause or compelling
3 reasons with proper evidentiary support and legal justification, must be made with
4 respect to Protected Material that a party seeks to file under seal. The parties' mere
5 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
6 without the submission of competent evidence by declaration, establishing that the
7 material sought to be filed under seal qualifies as confidential, privileged, or
8 otherwise protectable—constitute good cause.

9 Further, if a party requests sealing related to a dispositive motion or trial,
10 then compelling reasons, not only good cause, for the sealing must be shown, and
11 the relief sought shall be narrowly tailored to serve the specific interest to be
12 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
13 2010). For each item or type of information, document, or thing sought to be filed
14 or introduced under seal in connection with a dispositive motion or trial, the party
15 seeking protection must articulate compelling reasons, supported by specific facts
16 and legal justification, for the requested sealing order. Again, competent evidence
17 supporting the application to file documents under seal must be provided by
18 declaration.

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

25 **2. DEFINITIONS**

26
27 2.1 Action: [this pending federal lawsuit]. [*Option: consolidated or
28 related actions.]

1 2.2 Challenging Party: a Party or Non-Party that challenges the
2 designation of information or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
4 how it is generated, stored or maintained) or tangible things that qualify for
5 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
6 the Good Cause Statement.

7 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
8 their support staff).

9 2.5 Designating Party: a Party or Non-Party that designates information or
10 items that it produces in disclosures or in responses to discovery as
11 “CONFIDENTIAL.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner in which it is generated, stored, or maintained (including,
14 among other things, testimony, transcripts, and tangible things), that are produced
15 or generated in disclosures or responses to discovery in this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as
18 an expert witness or as a consultant in this Action.

19 2.8 House Counsel: attorneys who are employees of a party to this Action.
20 House Counsel does not include Outside Counsel of Record or any other outside
21 counsel.

22 2.9 Non-Party: any natural person, partnership, corporation, association or
23 other legal entity not named as a Party to this action.

24 2.10 Outside Counsel of Record: attorneys who are not employees of a
25 party to this Action but are retained to represent or advise a party to this Action and
26 have appeared in this Action on behalf of that party or are affiliated with a law firm
27 that has appeared on behalf of that party, and includes support staff.
28

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 **3. SCOPE**

15
16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.

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

23 **4. DURATION**

24
25 Once a case proceeds to trial, information that was designated as
26 CONFIDENTIAL or maintained pursuant to this protective order used or
27 introduced as an exhibit at trial becomes public and will be presumptively available
28 to all members of the public, including the press, unless compelling reasons

1 supported by specific factual findings to proceed otherwise are made to the trial
2 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
3 “good cause” showing for sealing documents produced in discovery from
4 “compelling reasons” standard when merits-related documents are part of court
5 record). Accordingly, the terms of this protective order do not extend beyond the
6 commencement of the trial.

7 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.
10 Each Party or Non-Party that designates information or items for protection under
11 this Order must take care to limit any such designation to specific material that
12 qualifies under the appropriate standards. The Designating Party must designate for
13 protection only those parts of material, documents, items or oral or written
14 communications that qualify so that other portions of the material, documents,
15 items or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

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

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

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

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

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

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

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on
28 the exterior of the container or containers in which the information is stored the

1 legend “CONFIDENTIAL.” If only a portion or portions of the information
2 warrants protection, the Producing Party, to the extent practicable, shall identify the
3 protected portion(s).

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

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11
12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37-1 et seq.

17 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
18 joint stipulation pursuant to Local Rule 37-2.

19 6.4 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party’s designation until the Court rules on the
26 challenge.

1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “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
18 necessary 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;

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

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

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

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

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
18 **PRODUCED IN OTHER LITIGATION**
19

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

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

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

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

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

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

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

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

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

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

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

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

12 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**
13

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

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**
24

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other
27 protection, the obligations of the Receiving Parties are those set forth in Federal
28 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for
2 production without prior privilege review. Pursuant to Federal Rule of Evidence
3 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
4 of a communication or information covered by the attorney-client privilege or work
5 product protection, the parties may incorporate their agreement in the stipulated
6 protective order submitted to the court.

7 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order, no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in
14 this Stipulated Protective Order. Similarly, no Party waives any right to object on
15 any ground to use in evidence of any of the material covered by this Protective
16 Order.

17 12.3 Filing Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Local Civil Rule 79-5. Protected Material
19 may only be filed under seal pursuant to a court order authorizing the sealing of the
20 specific Protected Material at issue. If a Party's request to file Protected Material
21 under seal is denied by the court, then the Receiving Party may file the information
22 in the public record unless otherwise instructed by the court.

23 **13. FINAL DISPOSITION**

24
25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must
27 return all Protected Material to the Producing Party or destroy such material. As
28 used in this subdivision, "all Protected Material" includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of the
2 Protected Material. Whether the Protected Material is returned or destroyed, the
3 Receiving Party must submit a written certification to the Producing Party (and, if
4 not the same person or entity, to the Designating Party) by the 60 day deadline that
5 (1) identifies (by category, where appropriate) all the Protected Material that was
6 returned or destroyed and (2) affirms that the Receiving Party has not retained any
7 copies, abstracts, compilations, summaries or any other format reproducing or
8 capturing any of the Protected Material. Notwithstanding this provision, Counsel
9 are entitled to retain an archival copy of all pleadings, motion papers, trial,
10 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
11 and trial exhibits, expert reports, attorney work product, and consultant and expert
12 work product, even if such materials contain Protected Material. Any such archival
13 copies that contain or constitute Protected Material remain subject to this Protective
14 Order as set forth in Section 4 (DURATION).

15 **14. VIOLATION**

16
17 Any violation of this Order may be punished by appropriate measures
18 including, without limitation, contempt proceedings and/or monetary sanctions.
19

20 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

21 DATED: 9/7/2017

22 

23 _____
24 ALEXANDER F. MacKINNON
25 United States Magistrate Judge
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name],
5 of _____ [print or type full address], declare
6 under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for
8 the Central District of California on [date] in the case of *Turn Key Wine Brands*
9 *LLC v. CustomVine Corp., et al.*, Case No. 2:16-CV-09088-RGK-AFM. I agree to
10 comply with and to be bound by all the terms of this Stipulated Protective Order
11 and I understand and acknowledge that failure to so comply could expose me to
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will
13 not disclose in any manner any information or item that is subject to this Stipulated
14 Protective Order to any person or entity except in strict compliance with the
15 provisions of this Order.

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

24
25 Date: _____

26 City and State where sworn and signed: _____

27 _____
28 Printed name

Signature