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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA -- WESTERN DIVISION**

GAVIN BUSH, an individual and
citizen of New Zealand,

Plaintiff,

v.

MARRIOTT VACATIONS
WORLDWIDE CORPORATION
(Doing Business As – MARRIOTT
VACATIONS WORLDWIDE,
MARRIOTT VACATION CLUB,
MARRIOTT VACATION CLUB
INTERNATIONAL, and MARRIOTT
SHADOW RIDGE - PALM DESERT
RESORT), a Delaware Corporation;
MARRIOTT RESORTS
HOSPITALITY CORPORATION, a
South Carolina Corporation; and
BOBBY BALDWIN, an individual,

Defendants.

Case No. 5:15-CV-01214-AB-KK

Judge: Hon. Andre Birotte, Jr.
Courtroom: 4

Magistrate Judge: Hon. Kenly K. Kato
Courtroom: 3-4

**[PROPOSED] PROTECTIVE
ORDER GOVERNING
DISCLOSURE OF
CONFIDENTIAL INFORMATION**

1 WHEREAS, Plaintiff GAVIN BUSH (“BUSH”) and Defendants
2 MARRIOTT VACATIONS WORLDWIDE CORPORATION (DOING
3 BUSINESS AS – MARRIOTT VACATIONS WORLDWIDE, MARRIOTT
4 VACATION CLUB, MARRIOTT VACATION CLUB INTERNATIONAL, AND
5 MARRIOTT SHADOW RIDGE - PALM DESERT RESORT), MARRIOTT
6 RESORTS HOSPITALITY CORPORATION (“MARRIOTT”), (all of the above
7 being, collectively, the “Parties) believe that in the course of this action certain
8 information, documents, and testimony likely to be disclosed and produced
9 through discovery may constitute or incorporate confidential medical, psychiatric
10 and health related information and records within the meaning of Federal Rule of
11 Civil Procedure 26(c); and

12 WHEREAS, the Parties believe that entry of a protective order pursuant to
13 Federal Rule of Civil Procedure 26(c) would best protect their interests while
14 facilitating discovery in this action; and

15 WHEREAS, the Court finds good cause exists for the entry of this Protective
16 Order in this action pursuant to Federal Rule of Civil Procedure 26(c) in order to
17 protect confidential medical, psychiatric and health related information and
18 records.

19 IT IS HEREBY ORDERED, pursuant to Federal Rule of Civil Procedure
20 26(c), that this Protective Order shall govern the treatment and handling of any
21 information produced or disclosed by any Party or non-Party (“the Producing
22 Party”) to this action, including without limitation, Rule 26 disclosures,
23 documents, depositions, deposition exhibits, interrogatory responses, responses to
24 requests for admission, and testimony (such information and/or documents shall
25 hereinafter be referred to as “Confidential Material”) provided it is designated (or,
26 within the appropriate time limitation, is pending designation) as being
27 Confidential Material as required by this Protective Order. **ANY USE OF**
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1 **CONFIDENTIAL MATERIAL AT TRIAL OR OTHER COURT**
2 **HEARINGS OR PROCEEDINGS SHALL BE GOVERNED BY THE**
3 **ORDERS OF THE TRIAL JUDGE.**

4 It is further ordered that:

5 1. Any Producing Party may designate any Confidential Material as
6 “CONFIDENTIAL” if such producing party in good faith believes that such
7 Confidential Material contains confidential or proprietary information, including
8 information in written, oral, electronic, graphic, pictorial, audiovisual, or other
9 form, whether it is a document, information contained in a document, item
10 produced for inspection, information revealed during a deposition, information
11 revealed in an interrogatory answer, or otherwise.

12 2. Any Producing Party may designate any Confidential Material as
13 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” if such producing party in
14 good faith believes that such Confidential Material contains confidential, sensitive,
15 and private medical, psychiatric and health related information and records of the
16 Producing Party, including, without limitation, records and reports from treating
17 physicians, psychiatrists, psychologists, therapists, and expert witnesses or any
18 other information of such sensitivity to warrant “Confidential—Attorneys’ Eyes
19 Only” treatment, including, information in written, oral, electronic, graphic,
20 pictorial, audiovisual, or other form, whether it is a document, information
21 contained in a document, item produced for inspection, information revealed
22 during a deposition, information revealed in an interrogatory answer, or otherwise.

23 3. A Producing Party may designate any document or other tangible
24 information or thing as “Confidential” or “Confidential—Attorneys’ Eyes Only”
25 by stamping a conspicuous place thereof with the legend CONFIDENTIAL or
26 CONFIDENTIAL—ATTORNEYS’ EYES ONLY, respectively. For example, in
27 the case of a document, a producing party may so mark the first page of a
28 multipage document and each page thereafter that actually contains Confidential

1 Material. In the case of other tangible items, a producing party may so mark any
2 appropriate location. For example, in the case of a computer disk, a producing
3 party may so mark the disk cover.

4 4. The terms of this Protective Order are applicable to Confidential
5 Material produced by a non-party and designated “CONFIDENTIAL” or
6 “CONFIDENTIAL—ATTORNEYS EYES ONLY” only when the producing non-
7 party has a proprietary interest or other right in such Confidential Material, or
8 where the producing non-party is contractually obligated to maintain the
9 confidentiality of such Confidential Material. A producing party may designate
10 documents, information, or things disclosed at a deposition of a producing party or
11 one of its present or former officers, directors, employees, agents, or independent
12 experts retained for purposes of this litigation as “Confidential” or “Confidential—
13 Attorneys’ Eyes Only” on the record during the deposition; or by notifying all
14 parties in writing of the specific item so designated, within twenty one (21) days
15 of receiving a copy of the deposition transcript, of the specific exhibits or lines and
16 pages of the transcript that are believed in good faith to contain Confidential
17 Material.

18 a. If a producing party designates such materials as “Confidential”
19 or “Confidential—Attorneys’ Eyes Only” on the record, the court reporter
20 shall indicate on the cover page of the transcript that the transcript includes
21 Confidential or Confidential—Attorneys’ Eyes Only information, shall list
22 the pages and lines numbers and/or exhibits of the transcript on or in which
23 such information is contained, and shall bind the transcript in separate
24 portions containing Confidential, Confidential—Attorneys’ Eyes Only, and
25 non-Confidential material. Further, during the period in which such
26 Confidential or Confidential—Attorneys’ Eyes Only information is
27 discussed during the deposition, any person present during the deposition
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1 who is not a Qualified Person, as defined below, or the court reporter, shall
2 be excluded from that portion of the deposition.

3 b. A deposition transcript and the exhibits thereto shall be
4 presumed Confidential—Attorneys’ Eyes Only in their entirety until twenty
5 one (21) days after receipt of the transcript by the producing party. If, after
6 the deposition is taken, the producing party designates any portion of the
7 deposition transcript or exhibits as “Confidential” or “Confidential—
8 Attorneys’ Eyes Only” by giving written notice as described above, all
9 persons receiving notice of such designation shall affix the same to the face
10 of their copy or copies of the transcript. At the expiration of the twenty one
11 (21) day period, the transcript and exhibits shall automatically revert to non-
12 Confidential status, except those portions that have been designated on the
13 record or in writing as “Confidential” or “Confidential—Attorneys’ Eyes
14 Only.” Nothing in this paragraph is intended to restrict any Party’s right to
15 attend depositions pursuant to paragraph 7 hereof.

16 c. A non-producing party may designate documents, information,
17 or things disclosed at a deposition as “Confidential” or “Confidential—
18 Attorneys’ Eyes Only” in the same manner as a producing party if it has a
19 good faith basis for claiming a proprietary interest or other right in the
20 Confidential Material.

21 5. Material designated as confidential under this Protective Order, the
22 information contained therein, and any summaries, copies, abstracts, or other
23 documents derived in whole or in part from material designated as confidential
24 (hereinafter “Confidential Material”) shall be used only for the purpose of the
25 prosecution, defense, or settlement of this action, and for no other purpose, except
26 that a Party may seek permission from another court to use Confidential Material
27 produced under this Protective Order provided said Party gives advance notice to
28 the parties whose materials are sought to be used and provided no disclosure of

1 such Confidential Material is made until such other court grants the request for
2 permission. The restrictions contained in this paragraph No. 5 may be modified by
3 written agreement of the parties, but such modifications will not be considered part
4 of this order unless approved by the Court. Nothing in this paragraph shall operate
5 to bar motions in limine or similar motion to exclude the use of any document in
6 any action between the Parties on any appropriate and available basis.

7 6. Confidential Material produced pursuant to this Protective Order may
8 be disclosed or made available only to the Court; Court personnel, including the
9 Court's court reporters; any mediator or settlement officer, and their supporting
10 personnel, mutually agreed upon by any of the parties engaged in settlement
11 discussions; to counsel for a Party (including the paralegal, clerical, and secretarial
12 staff employed by such counsel); and to the "qualified persons" designated below:

13 a. Plaintiff BUSH;

14 b. **three** officers or directors of MARRIOTT, or full-time
15 employees designated in writing as a representative of MARRIOTT who
16 have supervisory responsibility for this matter and is necessary to the
17 prosecution, defense, or settlement of this action;

18 c. experts or consultants (together with their clerical staff) retained
19 by such counsel to assist in the prosecution, defense, or settlement of this
20 action, including outside photocopying, imaging, data base, graphics or
21 design services retained by outside counsel in connection with this action;

22 d. court reporter(s) employed in this action; and

23 e. any other person as to whom the parties in writing agree.

24 Prior to receiving any Confidential Material, each "qualified person" defined
25 in (a), (b), (c) and (d) above shall be provided with a copy of this Protective Order
26 and shall execute and be bound by this Protective Order by signing a nondisclosure
27 agreement in the form annexed hereto as Exhibit A, a copy of which shall be
28 provided forthwith to counsel for each other party.

1 **The terms of this Protective Order shall not apply to the Court and**
2 **court personnel, including the Court’s court reporters, who are subject only**
3 **to the Court’s internal procedures regarding the handling of material filed or**
4 **lodged, including material filed or lodged under seal. The terms of this**
5 **Protective Order shall also not apply to any mediator or settlement officer,**
6 **and their supporting personnel, mutually agreed upon by any of the parties**
7 **engaged in settlement discussions.**

8 7. Depositions may be taken in the presence of any persons, including
9 Parties, but any Party may request that (a) non-qualified persons leave the room for
10 responses containing any Confidential Material; and (b) Parties leave the room for
11 responses containing CONFIDENTIAL – ATTORNEY’S EYES ONLY
12 information. No Party shall be entirely excluded from any deposition.

13 8. Material designated “CONFIDENTIAL – ATTORNEY’S EYES
14 ONLY” and the information contained therein, shall be disclosed only to the Court,
15 to outside counsel for the Parties (including the paralegal, clerical, and secretarial
16 staff employed by such counsel) and to the “qualified persons” listed in
17 subparagraphs 6(c) through (e) above, but shall not be disclosed to a Party, or to an
18 officer, director or employee or a Party, except as provided above or unless
19 otherwise agreed in writing or ordered by the Court. If disclosure of Attorney’s
20 Eyes Only Material is made pursuant to this paragraph, all other provisions in this
21 order with respect to confidentiality shall also apply.

22 9. Copies of Confidential or Confidential—Attorneys’ Eyes Only
23 material may be submitted to the Court in connection with any proceedings,
24 motions or hearings, provided that such materials are filed **along with an**
25 **application to have those materials filed under seal. The application must**
26 **show good cause for the under seal filing. A party that seeks to file under seal**
27 **any Protected Material must comply with Civil Local Rule 79-5. Protected**
28 **Material may only be filed under seal pursuant to a court order authorizing**

1 **the sealing of the specific Protected Material at issue. If a Party’s request to**
2 **file Confidential Material under seal is denied by the Court, the receiving**
3 **Party may file the information in the public record unless otherwise**
4 **instructed by the Court.** To the extent possible, only those portions of a filing
5 with the Court that contain material designated as “Confidential” or
6 “Confidential—Attorneys’ Eyes Only” shall be filed under seal. To the extent that
7 no Confidential or Confidential—Attorneys’ Eyes Only information is disclosed,
8 the parties may refer to, and quote from, documents designated as “Confidential”
9 or “Confidential—Attorneys’ Eyes Only” in pleadings, motions, briefs, affidavits,
10 or exhibits filed with the Court, without the need to file such pleadings, motions,
11 briefs, affidavits, or exhibits under seal. A Party’s counsel shall not unilaterally
12 decide that material that the other Party designated as “Confidential” or
13 “Confidential—Attorneys’ Eyes Only” does not contain any Confidential or
14 Confidential—Attorneys’ Eyes Only information. If a Party’s counsel disagrees
15 with a designation, that counsel shall follow the procedures described in paragraph
16 11 of this Order to challenge the designation.

17 **10.** In the event that any Confidential Material is used in any court
18 proceeding in this action, the Party using such material shall take all steps
19 reasonably available to protect its confidentiality during such use. **Nothing in this**
20 **Protective Order shall be construed as authorizing a party to disobey a lawful**
21 **subpoena or court order issued in another action.**

22 11. At any stage of these proceedings, should any party object to a
23 designation of any information, documents, or things as “Confidential” or
24 “Confidential—Attorneys’ Eyes Only,” the Party shall provide written notice of its
25 objection with the designation. The parties and/or the producing party shall first
26 attempt to resolve such objection in good faith on informal basis. If the objection
27 is not thereby resolved, the objecting Party may apply for a ruling from the Court
28 pursuant to Local Rule 37 determining whether the materials in question are

1 properly designated under the terms of this Protective Order. **Any challenge to a**
2 **designation of confidentiality may be made at any time that is consistent with**
3 **the Court’s Scheduling Order.** Until the Court makes such determination, all
4 material designated as “Confidential” or “Confidential—Attorneys’ Eyes Only”
5 shall be treated as such. **Any motion challenging a party’s designation of**
6 **material as Confidential Information or seeking to modify or amend this**
7 **Protective Order must be brought in strict compliance with Local Rules 37-1**
8 **and 37-2 (including the Joint Stipulation Requirement).**

9 12. Nothing in this Protective Order shall preclude any party to the
10 lawsuit or their attorneys from:

11 a. Showing materials designated as “Confidential” or
12 “Confidential—Attorneys’ Eyes Only” to an individual who either prepared
13 or reviewed the document prior to the filing of this action, or is shown by the
14 document to have received the document;

15 b. Disclosing or using, in any manner or for any purpose, any
16 information, documents, or things from the Party’s own files that the Party
17 itself designated as “Confidential” or “Confidential—Attorneys’ Eyes
18 Only”;

19 c. Disclosing or using, in any manner or for any purpose, any
20 information, documents, or things that were obtained from a source other
21 than discovery or to which a Party has a right of access independent of
22 discovery, or that were already known to such Party by lawful means, prior
23 to obtaining from or disclosure by, the other Party in the action, provided,
24 however, that the alternate source of such information, documents or things
25 was not under an obligation of confidentiality (as evidenced by a writing) to
26 a Party in the litigation at the time such information, documents or things
27 were obtained; or
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1 d. Disclosing or using, in any manner or for any purpose, any
2 information, document, or thing that is at the time of production or
3 disclosure, or subsequently becomes, through no wrongful act or failure to
4 act on the part of the receiving party, generally available to the relevant
5 public through publication or otherwise or is already rightfully in the
6 possession of the receiving party at the time of production.

7 13. If either party is served with a subpoena or similar process, from any
8 entity whatsoever, directing that Party to produce any materials designated as
9 “Confidential” or “Confidential—Attorneys’ Eyes Only” not so designated by that
10 Party, the counsel for that Party shall immediately give counsel for the designating
11 party written notice, by hand delivery or facsimile transmission, of the fact of such
12 service so that the designating Party may seek a protective order or otherwise act to
13 protect the confidentiality of the designated materials.

14 14. This Protective Order is entered solely for the purpose of facilitating
15 the exchange of documents and information between the parties to this action
16 without involving the Court unnecessarily in the process. Nothing in this
17 Protective Order nor the production of any information or document under the
18 terms of this Protective Order nor any proceedings pursuant to this Protective
19 Order shall be deemed to have the effect of an admission or waiver by either Party
20 or of altering the confidentiality or non-confidentiality of any such document or
21 information or altering any existing obligation of any Party or the absence thereof.

22 15. This Protective Order shall survive the final termination of this
23 action, to the extent that the information contained in Confidential Material is not
24 or does not become known to the public, and the Court shall retain jurisdiction to
25 resolve any dispute concerning the use of information disclosed hereunder. Within
26 **thirty (30)** days of the conclusion of this action, including any appeals, counsel for
27 the parties shall assemble and return to each other all documents, material and
28 deposition transcripts designated as confidential and all copies of same, or shall

1 certify the destruction thereof. Notwithstanding this provision, Counsel are
2 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
3 memoranda, correspondence or attorney work product, even if such material
4 contain Confidential Material, for the period of one (1) year. Any such archival
5 copies that contain or constitute Confidential Material remain subject to this
6 Protective Order.

7 16. The inadvertent or unintentional disclosure by the Producing Party of
8 attorney-client privileged information or attorney work-product, either by way of
9 document production or deposition testimony, shall not be deemed a waiver of
10 privilege for such information, provided that the Producing Party promptly makes
11 a good-faith representation that such production was inadvertent or mistaken and
12 takes prompt remedial action to withdraw the disclosure. Within three (3) business
13 days of receiving a written request to do so from the Producing Party, the
14 Receiving Party shall return to the Producing Party any documents or tangible
15 items that the Producing Party represents are covered by a claim of attorney-client
16 privilege or work product immunity and were inadvertently or mistakenly
17 produced. The receiving party shall also destroy any extra copies or summaries of,
18 or notes relating to, any such inadvertently or mistakenly produced information,
19 and certifying compliance with this provision; provided, however, that this
20 Protective Order shall not preclude the Party returning such information from
21 making a motion to compel production of the returned information **pursuant to**
22 **Local Rule 37**. The Producing Party shall retain copies of all returned documents
23 and tangible items for further disposition and, if such a motion is filed, shall
24 provide copies to the Court of the documents, item or information which is the
25 subject of the motion. In the event that a Producing Party discovers in a
26 deposition, inadvertently or unintentionally disclosed documents containing
27 attorney-client privileged information or attorney work-product, the Producing
28 Party may make a request on the record for the receiving party to return the

1 documents or tangible items that the Producing Party represents 1) are covered by
2 a claim of attorney-client privilege or work product immunity and 2) were
3 inadvertently or mistakenly produced; in which event, the receiving party shall be
4 precluded from deposing a witness with respect to such inadvertently or mistakenly
5 produced documents, other than to explore the basis for a claim of privilege or
6 work product.

7 17. The inadvertent or unintentional disclosure by the Producing Party of
8 “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”,
9 information either by way of document production or deposition testimony,
10 regardless of whether the information was so designated at the time of disclosure,
11 shall not be deemed a waiver in whole or in part of a Party’s claim of
12 confidentiality as to the information disclosed. Any such inadvertently or
13 unintentionally disclosed “CONFIDENTIAL” and/or “CONFIDENTIAL-
14 ATTORNEYS’ EYES ONLY” information, not designated as such pursuant to
15 paragraph 1 or 2, shall be designated as “CONFIDENTIAL” or
16 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”, as soon as reasonably possible
17 after the Producing Party becomes aware of the inadvertent or unintentional
18 disclosure and provides written notice to the Receiving Parties. The Receiving
19 Party shall thereafter mark and treat the materials as “CONFIDENTIAL” or
20 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” as appropriate, and such
21 materials shall be fully subject to this Protective Order as if they had been initially
22 so designated.

23
24 **GOOD CAUSE STATEMENT**

25 18. In discovery in this case, the parties will be required to exchange
26 confidential medical, psychiatric and health related information and records to
27 which they and third parties would not otherwise have access, including without
28 limitation, records and reports from treating physicians, psychiatrists,

1 psychologists, therapists, and expert witnesses or any other information of such
2 sensitivity. Allowing the parties or third parties to use or disclose such sensitive
3 and private information would cause harm to the disclosing party. The parties seek
4 the entry of this Protective Order to prevent the unauthorized use or dissemination
5 of confidential and private medical, psychiatric and health related information and
6 records produced in discovery during this action by competitors.

7 a. No document, information, or thing shall be designated
8 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
9 unless good cause exists for such designation under the standards set forth in
10 *Phillips v. G.M. Corp.*, 307 F.2d 1206, 1209 (9th Cir. 2002) and other
11 relevant authority. Good cause exists for the designation of information as
12 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” when the information
13 has not been made public and falls into one of the categories identified in
14 paragraph 2 hereof.

15 b. Good cause exists for the designation of information as
16 “CONFIDENTIAL” when the information has not been revealed to the
17 public and the information falls into one of the categories identified in
18 paragraph 1 hereof.

19 c. The Parties shall use reasonable efforts to minimize the amount
20 of material designated as “CONFIDENTIAL” or “CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.”

22 d. This Protective Order applies to such “CONFIDENTIAL” and
23 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information furnished
24 in this litigation regardless of the form in which it is transmitted and
25 regardless whether the information is furnished by a party or third party.
26 Such information may be contained in documents, written discovery
27 responses, declarations, deposition testimony, exhibits, and other materials
28 or deposition testimony provided by any Party.

1 The Court will determine on a case by case basis as issues arise whether
2 good cause exists for any particular confidentiality designation. Nothing in
3 this Protective Order will be construed as limiting the Court's discretion to
4 make appropriate rulings pursuant to applicable law.

5 19. This stipulated Protective Order is without prejudice to the right of
6 either party to seek relief from the Court, upon good cause shown, from any of the
7 restrictions provided in any of the preceding paragraphs hereof or to request
8 additional protection under Rule 26(c) of the Federal Rules of Civil Procedure.

9
10 Dated this 1st day of August, 2016.

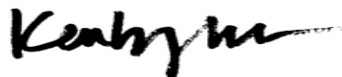
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12 **ULWELLING | SIDDIQUI LLP**

WOLFE & WYMAN LLP

13
14
15 By: /s/ Omar A. Siddiqui/
16 **OMAR A. SIDDIQUI**
17 **JONATHAN C. HATFIELD**
18 **BRITTANY A. ORTIZ**
Attorneys for Plaintiff
19 **Gavin Bush**

By: /s/ Eric T. Lamhofer
20 **ERIC T. LAMHOFER**
Attorney for Defendants
21 **Marriott Vacations Worldwide**
22 **Corporation and Marriott Resorts**
23 **Hospitality Corporation**

24
25 **IT IS SO ORDERED** at Riverside, California this 3rd day of August, 2016.

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Honorable Kenly Kiya Kato
United States Magistrate Judge

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EXHIBIT “A”

DECLARATION

I, _____, declare:

1. I reside at _____

I am employed as [state position] _____ by [name and address of employer] _____.

2. I am aware that an Protective Order dated _____ 2016 has been entered in Case No. 5:15-CV-01214-AB-KK in the United States District Court for the Central District of California. A copy of that Protective Order has been given to me.

3. I hereby certify that I am one of the persons allowed under paragraphs 6 or 8 of the Protective Order to receive access to information, documents, or things designated “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” respectively. I also agree to be bound by the terms of the Protective Order, specifically including the requirement that information, documents, and things I may receive that are designated as “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” and all copies, notes, summaries, and other records made regarding such information, documents, and things, shall be disclosed to no one other than persons specifically allowed by paragraphs 6 or 8 of the Protective Order, respectively, to have access to such information.

4. I agree to act in good faith in carrying out my duties under the Protective Order.

5. I understand that any use or disclosure by me which is contrary to my undertakings in this declaration will constitute a violation of the Protective Order and may subject me to sanctions by the Court for contempt.

6. I hereby consent the Court’s continuing exercise of jurisdiction over me for the purpose of enforcing the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____