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Brooks Nielsen, Matt Taylor, Tournado, Inc.
and Beach Goth Festival, LLC*

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

NOISE GROUP, LLC, a California
limited liability company

Plaintiff,

v.

THE GROWLERS, LLC, a California
limited liability company; BROOKS
NIELSEN, individually and dba The
Growlers; MATT TAYLOR, individually
and dba The Growlers; TOURNADO,
INC., a California corporation; BEACH
GOTH FESTIVAL, LLC, a California
limited liability company; and DOES 1
through 20 inclusive,

Defendants.

Case No. 16-SACV-02025-JLS-KES

**ORDER RE: STIPULATED
PROTECTIVE ORDER**

[Discovery Document: Referred to
Magistrate Judge Karen E. Scott]

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the

{41300735;1}

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

10 B. GOOD CAUSE STATEMENT

11 This action is likely to involve commercial, financial, and/or proprietary
12 information for which special protection from public disclosure and from use for any
13 purpose other than prosecution of this action is warranted. Such confidential and
14 proprietary materials and information consist of, among other things, confidential business
15 or financial information, information regarding confidential business practices, or
16 commercial information (including information implicating privacy rights of the parties
17 and third parties), information otherwise generally unavailable to the public, or which may
18 be privileged or otherwise protected from disclosure under state or federal statutes, court
19 rules, case decisions, or common law. Accordingly, to expedite the flow of information, to
20 facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
21 adequately protect information the parties are entitled to keep confidential, to ensure that
22 the parties are permitted reasonable necessary uses of such material in preparation for and
23 in the conduct of trial, to address their handling at the end of the litigation, and serve the
24 ends of justice, a protective order for such information is justified in this matter. It is the
25 intent of the parties that information will not be designated as confidential for tactical
26 reasons and that nothing be so designated without a good faith belief that it has been
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1 maintained in a confidential, non-public manner, and there is good cause why it should
2 not be part of the public record of this case.

3 2. DEFINITIONS

4 2.1. Action: This pending federal lawsuit, including the counterclaims.

5 2.2. Challenging Party: a Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 2.3. “CONFIDENTIAL” Information or Items: information (regardless of how it
8 is generated, stored or maintained) or tangible things that qualify for protection under
9 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
10 Statement.

11 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
12 support staff).

13 2.5. Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”.

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

19 2.7. Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
21 expert witness or as a consultant in this Action.

22 2.8. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
23 or Items: Extremely sensitive “Confidential Information or Items,” the disclosure of
24 which would create a substantial risk of serious harm.

25 2.9. House Counsel: attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.10. Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.11. 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 2.12. Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.13. Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.14. 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 2.15. Protected Material: Any Disclosure or Discovery Material that is designated
17 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY.”

19 2.16. Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 3. SCOPE

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

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

3 4. DURATION

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

11 5. DESIGNATING PROTECTED MATERIAL

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

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

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

26 5.2. Manner and Timing of Designations. Except as otherwise provided in this
27 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or
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1 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
2 must be clearly so designated before the material is disclosed or 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 proceedings),
6 that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” OR
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (hereinafter
8 “CONFIDENTIAL legend” or “HIGHLY CONFIDENTIAL legend”), to each page that
9 contains protected material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the margins).

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

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

1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information is stored the legend
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” If only a portion or portions of
5 the information warrants protection, the Producing Party, to the extent practicable, shall
6 identify the protected portion(s).

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

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

15 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution
16 process under Local Rule 37.1 et seq.

17 6.3. The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
19 harass or impose unnecessary expenses and burdens on other parties) may expose the
20 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
21 the confidentiality designation, all parties shall continue to afford the material in question
22 the level of protection to which it is entitled under the Producing Party’s designation until
23 the Court rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1. Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this Action
27 only for prosecuting, defending, or attempting to settle this Action. Such Protected
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1 Material may be disclosed only to the categories of persons and under the conditions
2 described in this Order. When the Action has been terminated, a Receiving Party must
3 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

7 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
9 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

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

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

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

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

9 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
11 writing by the Designating Party, a Receiving Party may disclose any information or item
12 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

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

19 (c) the court and its personnel;

20 (d) court reporters and their staff;

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

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

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

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated by another Party in this Action
5 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY,” that Party must:

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

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

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

15 If the Designating Party timely seeks a protective order, the Party served with the
16 subpoena or court order shall not produce any information designated in this action as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
18 before a determination by the court from which the subpoena or order issued, unless the
19 Party has obtained the Designating Party’s permission. The Designating Party shall bear
20 the burden and expense of seeking protection in that court of its confidential material and
21 nothing in these provisions should be construed as authorizing or encouraging a
22 Receiving Party in this Action to disobey a lawful directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
24 IN THIS LITIGATION

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

4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is subject
6 to an agreement with the Non-Party not to produce the Non-Party's confidential
7 information, then the Party shall:

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

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

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

16 (c) If the Non-Party fails to seek a protective order from this court within
17 14 days of receiving the notice and accompanying information, the Receiving Party may
18 produce the Non-Party's confidential information responsive to the discovery request. If
19 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
20 information in its possession or control that is subject to the confidentiality agreement
21 with the Non-Party before a determination by the court. Absent a court order to the
22 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
23 court of its Protected Material.

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

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

17 12. MISCELLANEOUS

18 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

20 12.2. Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to disclosing
22 or producing any information or item on any ground not addressed in this Stipulated
23 Protective Order. Similarly, no Party waives any right to object on any ground to use in
24 evidence of any of the material covered by this Protective Order.

25 12.3. Filing Protected Material. A Party that seeks to file under seal any Protected
26 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
27 under seal pursuant to a court order authorizing the sealing of the specific Protected
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1 Material at issue. If a Party's request to file Protected Material under seal is denied by the
2 court, then the Receiving Party may file the information in the public record unless
3 otherwise instructed by the court.

4 13. FINAL DISPOSITION

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

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1 14. VIOLATIONS

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 LAMB AND KAWAKAMI LLP

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7 Dated:

By: /s/Justin C. Bentley

Justin C. Bentley

Shane W. Tseng

8
9 Counsel for Plaintiff Noise Group, LLC

10 AKERMAN LLP

11 Dated: 4/6/2017

By: /s/David Brafman

David Brafman

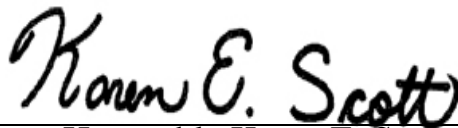
Mark D. Passler

Joshua Mandell

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13
14 Counsel for Defendants The Growlers,
15 LLC, Brooks Nielsen, Matt Taylor,
16 Tornado, Inc., and Beach Goth Festival,
17 LLC

18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19 Dated: April 10, 2017

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Honorable Karen E. Scott
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was issued by
7 the United States District Court for the Central District of California on _____ [date]
8 in the case of *Noise Group, LLC v. The Growlers, LLC et al.*, Case No. 8:16-cv-02025-
9 JLS-KES. I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
12 that I will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action.

19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

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23 Signature: _____