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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Harbor Breeze Corporation, a California corporation; and L.A. Waterfront Cruises, LLC, a California limited liability company,

Plaintiffs,

vs.

Newport Landing Sportfishing, Inc., a California corporation; Davey's Locker Sportfishing, Inc., a California corporation; Ocean Explorer, Inc., a California corporation; Freelance Sportfishing, Inc., a California corporation; and DOES 1-10,

Defendants.

CASE NO. 8:17-cv-01613-CJC-DFM

**AMENDED PROTECTIVE ORDER**

Action Filed: September 15, 2017  
Trial Date: March 12, 2019

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that 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, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable  
2 legal principles. Further, as set forth in Section 13.3, below, this Protective Order does  
3 not entitle the parties to file confidential information under seal. Rather, when the  
4 parties seek permission from the court to file material under seal, the parties must  
5 comply with Civil Local Rule 79-5 and with any pertinent orders of the assigned  
6 District Judge and Magistrate Judge, including any procedures adopted under the Pilot  
7 Project for the Electronic Submission and Filing of Under Seal Documents.

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9 B. GOOD CAUSE STATEMENT

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12 In light of the nature of the claims and allegations in this case and the parties'  
13 representations that discovery in this case will involve the production of confidential  
14 business records, and in order to expedite the flow of information, to facilitate the  
15 prompt resolution of disputes over confidentiality of discovery materials, to  
16 adequately protect information the parties are entitled to keep confidential, to ensure  
17 that the parties are permitted reasonable necessary uses of such material in connection  
18 with this action, to address their handling of such material at the end of the litigation,  
19 and to serve the ends of justice, a protective order for such information is justified in  
20 this matter. The parties shall not designate any information/documents as confidential  
21 without a good faith belief that such information/documents have been maintained in  
22 a confidential, non-public manner, and that there is good cause or a compelling reason  
23 why it should not be part of the public record of this case.

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25 2. DEFINITIONS

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27 2.1 Action: The instant action: *Harbor Breeze Corporation et al. v. Newport*  
28 *Landing Sportfishing, Inc. et al.*, Case No. 8:17-cv-01613-CJC-DFM.

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 how  
4 it is generated, stored or maintained) or tangible things that qualify for protection  
5 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
6 Cause Statement.

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

8           2.5    Designating Party: a Party or Non-Party that designates information or  
9 items that it produces in disclosures or in responses to discovery as  
10 “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY.”

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 or  
15 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 party  
25 to this Action but are retained to represent or advise a party to this Action and have  
26 appeared in this Action on behalf of that party or are affiliated with a law firm which  
27 has appeared on behalf of that party, and includes support staff.

28          2.11 Party: any party to this Action, including all of its officers, directors,

1 employees, consultants, retained experts.

2       2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
3 Discovery Material in this Action.

4       2.13 Professional Vendors: persons or entities that provide litigation support  
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
6 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
7 and their employees and subcontractors.

8       2.14 Protected Material: any Disclosure or Discovery Material that is  
9 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
10 EYES ONLY.”

11       2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
12 from a Producing Party.

13       2.16 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY:  
14 Information or Items: extremely sensitive “Confidential Information or Items,”  
15 disclosure of which to another Party or Non-Party would create a substantial risk of  
16 serious harm that could not be avoided by less restrictive means.

17  
18 3. SCOPE  
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20       The protections conferred by this Order cover not only Protected Material (as  
21 defined above), but also (1) any information copied or extracted from Protected  
22 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
23 and (3) any deposition testimony, conversations, or presentations by Parties or their  
24 Counsel that might reveal Protected Material, other than during a court hearing or at  
25 trial.

26       Any use of Protected Material during a court hearing or at trial shall be  
27 governed by the orders of the presiding judge. This Order does not govern the use of  
28 Protected Material during a court hearing or at trial.

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4. DURATION

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

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

If it comes to a Designating Party’s attention that information or items that it

1 designated for protection do not qualify for protection, that Designating Party must  
2 promptly notify all other Parties that it is withdrawing the inapplicable designation.

3       5.2       Manner and Timing of Designations. Except as otherwise provided in  
4 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material  
5 that qualifies for protection under this Order must be clearly so designated before the  
6 material is disclosed or produced.

7       Designation in conformity with this Order requires:

8       (a) for information in documentary form (e.g., paper or electronic  
9 documents, but excluding transcripts of depositions), that the Producing Party affix at  
10 a minimum, the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY”, to each page that contains protected material. If only  
12 a portion or portions of the material on a page qualifies for protection, the Producing  
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
14 markings in the margins).

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

27       (b) for testimony given in depositions that the Designating Party identifies  
28 on the record, before the close of the deposition as protected testimony or for

1 testimony given in depositions that the Designating Party identifies as protected  
2 testimony in writing to the Receiving Party, within 14 days of receiving the transcript.

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

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

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16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17  
18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
19 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
21 process under Local Rule 37-1 *et seq.*

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

1 challenge.

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3 7. ACCESS TO AND USE OF PROTECTED MATERIAL  
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6 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
7 disclosed or produced by another Party or by a Non-Party in connection with this  
8 Action only for prosecuting, defending, or attempting to settle this Action. Such  
9 Protected Material may be disclosed only to the categories of persons and under the  
10 conditions described in this Order. When the Action has been terminated, a Receiving  
11 Party must comply with the provisions of Section 14 below.

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

15 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
16 otherwise ordered by the court or permitted in writing by the Designating Party, a  
17 Receiving Party may disclose any information or item designated  
18 “CONFIDENTIAL” only to:

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

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

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

27 (d) the court and its personnel;

28 (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 a  
5 custodian or other person who otherwise possessed or knew the information;

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

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

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
19 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
20 writing by the Designating Party, a Receiving Party may disclose any information or  
21 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only  
22 to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
24 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
25 to disclose the information for this litigation and who have signed the  
26 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

27 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
28 necessary for this litigation, and (2) who have signed the “Acknowledgment and

- 1 Agreement to Be Bound” (Exhibit A);  
2 (d) the court and its personnel;  
3 (e) court reporters and their staff, professional jury or trial consultants, and  
4 Professional Vendors to whom disclosure is reasonably necessary for this litigation  
5 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
6 A); and  
7 (f) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information not  
9 through any violation of this Protective Order.

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11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
12 OTHER LITIGATION

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14 If a Party is served with a subpoena or a court order issued in other litigation  
15 that compels disclosure of any information or items designated in this Action as  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
17 ONLY,” that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification  
19 shall include a copy of the subpoena or court order unless prohibited by law;

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

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

26 If the Designating Party timely seeks a protective order, the Party served with  
27 the subpoena or court order shall not produce any information designated in this action  
28 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY” before a determination by the court from which the subpoena or order issued,  
2 unless the Party has obtained the Designating Party’s permission, or unless otherwise  
3 required by the law or court order. The Designating Party shall bear the burden and  
4 expense of seeking protection in that court of its confidential material and nothing in  
5 these provisions should be construed as authorizing or encouraging a Receiving Party  
6 in this Action to disobey a lawful directive from another court.

7  
8 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
9 IN THIS LITIGATION

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

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

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

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

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

1 (c) If a Non-Party represented by counsel fails to commence the process  
2 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice  
3 and accompanying information or fails contemporaneously to notify the Receiving  
4 Party that it has done so, the Receiving Party may produce the Non-Party's  
5 confidential information responsive to the discovery request. If an unrepresented  
6 Non-Party fails to seek a protective order from this court within 14 days of receiving  
7 the notice and accompanying information, the Receiving Party may produce the Non-  
8 Party's confidential information responsive to the discovery request. If the Non-Party  
9 timely seeks a protective order, the Receiving Party shall not produce any  
10 information in its possession or control that is subject to the confidentiality agreement  
11 with the Non-Party before a determination by the court unless otherwise required by  
12 the law or court order. Absent a court order to the contrary, the Non-Party shall bear  
13 the burden and expense of seeking protection in this court of its Protected Material.

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15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
27 PROTECTED MATERIAL

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

10  
11 **12. THIRD-PARTY PRODUCTIONS**

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13           **12.1 If a Non-Party produces documents to a Party in response to a**  
14 **subpoena, the Receiving Party must, within two (2) business days of receipt,**  
15 **electronically transmit those documents to counsel for all other**  
16 **Parties. Thereafter, counsel for each Party shall have a five (5) business day**  
17 **review period, to review and designate those documents “CONFIDENTIAL” or**  
18 **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” per this**  
19 **Protective Order (the “Review Period”). During the Review Period, all subject**  
20 **documents shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’**  
21 **EYES ONLY.”.**

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23 **13. MISCELLANEOUS**

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25           13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
26 person to seek its modification by the Court in the future.

27           13.2 Right to Assert Other Objections. No Party waives any right it otherwise  
28 would have to object to disclosing or producing any information or item on any

1 ground not addressed in this Protective Order. Similarly, no Party waives any right  
2 to object on any ground to use in evidence of any of the material covered by this  
3 Protective Order.

4 13.3 Filing Protected Material. A Party that seeks to file under seal any  
5 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent  
6 orders of the assigned District Judge and Magistrate Judge, including any procedures  
7 adopted under the Pilot Project for the Electronic Submission and Filing of Under  
8 Seal Documents. Protected Material may only be filed under seal pursuant to a court  
9 order authorizing the sealing of the specific Protected Material at issue. If a Party's  
10 request to file Protected Material under seal is denied by the court, then the Receiving  
11 Party may file the information in the public record unless otherwise instructed by the  
12 court.

13  
14 14. FINAL DISPOSITION


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16 After the final disposition of this Action, as defined in Section 4, within 60 days  
17 of a written request by the Designating Party, each Receiving Party must return all  
18 Protected Material to the Producing Party or destroy such material. As used in this  
19 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
20 summaries, and any other format reproducing or capturing any of the Protected  
21 Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
22 must submit a written certification to the Producing Party (and, if not the same person  
23 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
24 category, where appropriate) all the Protected Material that was returned or destroyed  
25 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
26 compilations, summaries or any other format reproducing or capturing any of the  
27 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
28 archival copy of all pleadings, motion papers, trial, deposition, and hearing

1 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
2 reports, attorney work product, and consultant and expert work product, even if such  
3 materials contain Protected Material. Any such archival copies that contain or  
4 constitute Protected Material remain subject to this Protective Order as set forth in  
5 Section 4.

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

9 **IT IS SO ORDERED.**

10 **DATED:** April 18, 2018

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12 \_\_\_\_\_  
13 Honorable Douglas F. McCormick  
14 United States Magistrate Judge  
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ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ in the case of *Harbor Breeze Corporation et al. v Newport Landing Sportfishing, Inc. et al.*, Case No. 8:17-cv-01613-CJC-DFM. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_