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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

PACIFIC CONTOURS CORPORATION, a California corporation,

Plaintiff,

v.

FIVES MACHINING SYSTEMS, INC., a Delaware corporation; and DOES 1 through 20, Inclusive,

Defendants.

Case No. 8:18-cv-00413 DOC (JDEx)
Assigned to Hon. David O. Carter

STIPULATION AND PROTECTIVE ORDER

Complaint filed: February 16, 2018

Trial Date: May 28, 2019

1. 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 pursuing this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles.

2 **2. GOOD CAUSE STATEMENT**

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

24 **3. ACKNOWLEDGMENT OF UNDER-SEAL FILING PROCEDURE**

25 The parties further acknowledge, as set forth in Section 14.3, below, that this
26 Stipulated Protective Order does not entitle them to file confidential information
27 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
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1 and the standards that will be applied when a party seeks permission from the court
2 to file material under seal. There is a strong presumption that the public has a right
3 of access to judicial proceedings and records in civil cases. In connection with non-
4 dispositive motions, good cause must be shown to support a filing under seal. *See*
5 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006),
6 *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-*
7 *Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
8 stipulated protective orders require good cause showing), and a specific showing of
9 good cause or compelling reasons with proper evidentiary support and legal
10 justification, must be made with respect to Protected Material that a party seeks to
11 file under seal. The parties' mere designation of Disclosure or Discovery Material
12 as CONFIDENTIAL does not— without the submission of competent evidence by
13 declaration, establishing that the material sought to be filed under seal qualifies as
14 confidential, privileged, or otherwise protectable—constitute good cause.

15 Further, if a party requests sealing related to a dispositive motion or trial,
16 then compelling reasons, not only good cause, for the sealing must be shown, and
17 the relief sought shall be narrowly tailored to serve the specific interest to be
18 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
19 2010). For each item or type of information, document, or thing sought to be filed
20 or introduced under seal, the party seeking protection must articulate compelling
21 reasons, supported by specific facts and legal justification, for the requested sealing
22 order. Again, competent evidence supporting the application to file documents
23 under seal must be provided by declaration.

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

3 **4. DEFINITIONS**

4 4.1 Action: the above-entitled federal lawsuit.

5 4.2 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 4.5 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 4.6 Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced
19 or generated in disclosures or responses to discovery.

20 4.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 4.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 4.9 Non-Party: any natural person, partnership, corporation, association or
27 other legal entity not named as a Party to this action.

1 4.10 Outside Counsel of Record: attorneys who are not employees of a
2 party to this Action but are retained to represent a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm that
4 has appeared on behalf of that party, and includes support staff.

5 4.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 4.13 Professional Vendors: persons or entities that provide litigation
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 4.14 Protected Material: any Disclosure or Discovery Material that is
15 designated as "CONFIDENTIAL."

16 4.15 Receiving Party: a Party that receives Disclosure or Discovery
17 material from a Producing Party.

18 **5. SCOPE**

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

24 Any use of Protected Material at trial shall be governed by the orders of the
25 trial judge and other applicable authorities. This Order does not govern the use of
26 Protected Material at trial.

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1 **6. DURATION**

2 Once a case proceeds to trial, information that was designated as
3 CONFIDENTIAL or maintained pursuant to this protective order used or
4 introduced as an exhibit at trial becomes public and will be presumptively available
5 to all members of the public, including the press, unless compelling reasons
6 supported by specific factual findings to proceed otherwise are made to the trial
7 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
8 “good cause” showing for sealing documents produced in discovery from
9 “compelling reasons” standard when merits-related documents are part of court
10 record). Accordingly, the terms of this protective order do not extend beyond the
11 commencement of the trial.

12 **7. DESIGNATING PROTECTED MATERIAL**

13 7.1 Exercise of Restraint and Care in Designating Material for Protection.
14 Each Party or Non-Party that designates information or items for protection under
15 this Order must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The Designating Party must designate for
17 protection only those parts of material, documents, items or oral or written
18 communications that qualify so that other portions of the material, documents,
19 items or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this Order.

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

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

2 7.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
4 that qualifies for protection under this Order must be clearly so designated before
5 the material is disclosed or produced.

6 Designation in conformity with this Order requires:

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

26 (b) For testimony given in depositions that the Designating Party identifies
27 the Disclosure or Discovery Material on the record, before the close of the
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1 deposition all protected testimony.

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

8 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the Designating Party’s right to secure protection under this Order for such
11 material. Upon timely correction of a designation, the Receiving Party must make
12 reasonable efforts to assure that the material is treated in accordance with the
13 provisions of this Order.

14 **8. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court’s
17 Scheduling Order.

18 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
19 resolution process under Local Rule 37-1 et seq.

20 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
21 joint stipulation pursuant to Local Rule 37-2.

22 8.4 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
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1 entitled under the Producing Party’s designation until the Court rules on the
2 challenge.

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

4 9.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a
9 Receiving Party must comply with the provisions of section 15 below (FINAL
10 DISPOSITION).

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

14 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 “CONFIDENTIAL” only to:

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

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

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

26 (d) the court and its personnel;

27 (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 form attached as Exhibit A hereto; and (2) they
9 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 mediators or settlement officers and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

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

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

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

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

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1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected. If the
3 Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action
5 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 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
12 **PRODUCED IN THIS LITIGATION**

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

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

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

25 (2) promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably
27 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 within 14
4 days of receiving the notice and accompanying information, the Receiving Party
5 may produce the Non-Party's confidential information responsive to the discovery
6 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
7 not produce any information in its possession or control that is subject to the
8 confidentiality agreement with the Non-Party before a determination by the court.
9 Absent a court order to the contrary, the Non-Party shall bear the burden and
10 expense of seeking protection in this court of its Protected Material.

11 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

20 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
21 **PROTECTED MATERIAL**

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

5 **14. MISCELLANEOUS**

6 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the Court in the future.

8 14.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order, no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in
11 this Stipulated Protective Order. Similarly, no Party waives any right to object on
12 any ground to use in evidence of any of the material covered by this Protective
13 Order.

14 14.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Local Civil Rule 79-5. Protected Material
16 may only be filed under seal pursuant to a court order authorizing the sealing of the
17 specific Protected Material. If a Party's request to file Protected Material under seal
18 is denied by the court, then the Receiving Party may file the information in the
19 public record unless otherwise instructed by the court.

20 **15. FINAL DISPOSITION**

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

12 **16. VIOLATION**

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

15 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

16
17 Dated: June 19, 2018

SNELL & WILMER L.L.P.

18 By: /s/ Randolph T. Moore

19 Randolph T. Moore
20 Attorneys for Defendant
Fives Machining Systems, Inc.

21
22 Dated: June 19, 2018

THE FELDHAKÉ LAW FIRM, APC

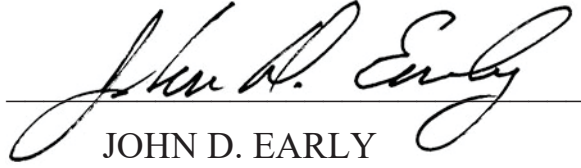
23
24 By: /s/ Robert J. Feldhake

25 Robert J. Feldhake
26 Attorneys for Plaintiff
Pacific Contours Corporation

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: June 20, 2018



JOHN D. EARLY

United States Magistrate Judge

EXHIBIT A

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EXHIBIT A

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 in the case of Pacific Contours
Corporation, Plaintiff vs. Fives Machining Systems, Inc., Defendant, Case No.
8:18-CV-00413 DOC (JDEx). 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 Protective 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: _____