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10 Attorneys for Defendant  
DOLLAR TREE STORES, INC.

11  
12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA  
14 FRESNO DIVISION

15  
16 MARIA SERPA, an individual,  
17 Plaintiff,  
18 v.  
19 DOLLAR TREE STORES, INC.; and  
20 DOES 1 THROUGH 100, INCLUSIVE,  
21 Defendants.

Case No. 1:14-cv-01452-GSA

**STIPULATED PROTECTIVE AND  
CLAWBACK ORDER; ORDER THEREON**

(Doc. 9)

1 Plaintiff Maria Serpa (“Plaintiff”) and Defendant Dollar Tree Stores, Inc.  
2 (“Defendant”), by their respective counsel, hereby stipulate and agree as follows:

3 **WHEREAS**, the parties to this proceeding anticipate that during the course of the  
4 above-captioned litigation, the parties will produce or provide documents and information (including  
5 electronic data), which one or more parties contend contain trade secrets or other sensitive, private,  
6 confidential or proprietary information;

7 **WHEREAS**, the parties to this proceeding wish to protect the confidentiality of such  
8 documents and information and to ensure that the parties can obtain and pursue discovery with the  
9 minimum of delay and expense;

10 **WHEREAS**, the parties have agreed to stipulate to protect certain privileged and  
11 otherwise protected documents, data (including electronically stored information), and other  
12 information, including without limitation, metadata (collectively, “document” or “documents”),  
13 against claims of waiver and inadvertent production in the event they are produced during the course  
14 of this litigation whether pursuant to a Court Order, a parties’ discovery request or informal  
15 production.

16 **WHEREAS**, the parties wish to comply with discovery deadlines and complete  
17 discovery as expeditiously as possible, while preserving and without waiving any evidentiary  
18 protections or privileges applicable to the information contained in the documents produced,  
19 including as against third parties and other Federal and State proceedings, and in addition to their  
20 agreement, need the additional protections of a Court Order under Federal Rule of Evidence 502(d)  
21 and (e) to do so.

22 **WHEREAS**, this Stipulation is designed to foreclose any argument the disclosure of  
23 documents subject to a legally recognized claim of privilege, including without limitation the  
24 attorney-client privilege, work-product doctrine, or other applicable privilege, by the Producing  
25 Party was not inadvertent, that the Producing Party did not take reasonable steps to prevent the  
26 disclosure of privileged documents, that the Producing Party did not take reasonable or timely steps  
27 to rectify such disclosure and/or acts as a waiver of applicable privileges or protections associated  
28 with such documents.

1           **THEREFORE**, the parties seek the entry of an Order, pursuant to Federal Rule of  
2 Civil Procedure 26(c), governing the disclosure of documents and information therein pertaining to  
3 “Confidential Information” or “Counsel Only” information on the terms set forth herein, as well as  
4 an Order, pursuant to Federal Rule of Evidence 502, governing the return of inadvertently produced  
5 documents and data and affording them the protections of Federal Rule of Evidence 502(d) and (e),  
6 on the terms set forth herein.

7           **IT IS HEREBY AGREED, STIPULATED AND ORDERED THAT:**

8           1.       In connection with discovery and other proceedings in this action, the parties  
9 may designate any document, thing, material, testimony or other information derived therefrom, as  
10 “Confidential Information” under the terms of this Stipulated Protective Order (“Order”). Neither  
11 party shall designate any discovery material as “Confidential Information” without first making a  
12 determination that the information is properly subject to protection under Federal Rule of Civil  
13 Procedure 26(c) and that such protection is warranted in good faith. “Confidential Information” shall  
14 not be disclosed except as provided for herein.

15           2.       “Confidential Information” includes:

16           (a)       Information that any party reasonably believes has not lawfully been made  
17 public and which concerns or relates to the personnel information, processes, objectives, strategies,  
18 plans, advertising, methodologies, procedures, operations, type of work, products, services, sales,  
19 purchases, transfers, identification of customers, customer information, bank and payroll related  
20 agreements, policies, marketing plans, vendor information, profit margins, product quantities and  
21 costs amount or source of income, costs, profits, losses, financial information, business forecasts, or  
22 expenditures of any person, firm, partnership, corporation, or other organization or organizational  
23 structure, if the disclosure of such information has the effect of causing harm or potential harm to the  
24 competitive position or privacy rights of the person, firm, partnership, corporation, or to the  
25 organization from which the information was obtained or of third parties, including but not limited to  
26 persons transacting business with any of the parties to this action.

1 (b) The personnel records of current or former employees or applicants of  
2 Defendant, Defendant's parent company and affiliates, or non-parties acquired by or otherwise  
3 associated with Defendant; and,

4 (c) Any sensitive or private personal information, such as social security  
5 numbers, driver's license numbers, home or business addresses, home or business phone numbers  
6 for any individual, financial or tax information, and medical information.

7 3. Documents that are confidential under this Order shall be so designated by  
8 writing, typing, stamping or otherwise affixing the legend "Confidential Information" (and such  
9 other and further legend as may reasonably be included to specify such confidentiality) on copies of  
10 the document. Stamping the legend "Confidential Information" on the cover of any multi-page  
11 document (or on the cover of a disk containing electronic data) shall designate all pages of the  
12 document as confidential, and all data contained on a disk as confidential, unless otherwise indicated  
13 by the producing party. Confidential documents (including deposition transcripts) also may be so  
14 designated after production by written communication and reproduction with a "Confidential  
15 Information" legend for purposes of substitution of the original documentation, and all parties shall  
16 use their best efforts to ensure that no prior disclosure shall be used or re-disclosed contrary to the  
17 terms of this Order.

18 4. The inadvertent or unintentional disclosure of "Confidential Information"  
19 shall not be deemed a waiver in whole or in part of a party's claim of confidentiality. Any such  
20 inadvertently or unintentionally disclosed "Confidential Information" shall be designated as  
21 "Confidential Information" as soon as reasonably possible after the producing party becomes aware  
22 of the inadvertent or unintentional disclosure and the producing party shall provide counsel for the  
23 other parties with a duplicate copy bearing the legend "Confidential Information," whereupon the  
24 unmarked copies will be returned or destroyed.

25 5. Portions of transcripts of depositions, in which any "Confidential  
26 Information" is quoted, paraphrased, discussed, or referred to, or in which the subject matter covered  
27 by any "Confidential Information" is discussed or referred to, shall be subject to the same  
28 confidential treatment as provided herein for the underlying "Confidential Information" and shall be

1 designated as confidential. Requests for such confidential treatment may be made at the deposition  
2 or at the latest within twenty (20) calendar days after receipt of a transcript thereof. All transcripts  
3 of depositions shall be treated as Confidential for at least that 20-day period.

4           6.       Recognizing the legitimate confidentiality needs of the parties, all discovery  
5 shall be used only by the parties to this action for purposes of resolution of the claims asserted in this  
6 action, any trial and appeal of this action, and enforcement of any award or judgment thereon.  
7 Information designated as “Confidential Information” under this Order, and any summaries, copies  
8 (including electronic copies), abstracts, or other documents derived in whole or in part from  
9 information, designated as Confidential, shall be used only by the parties to this action; for the  
10 purpose of the prosecution, defense, or settlement of the claims asserted in this action, any trial and  
11 appeal of this action and the enforcement of any award or judgment based on such claims, and for no  
12 other purpose.

13           7.       “Confidential Information” produced pursuant to this Order may be disclosed  
14 or made available only to counsel for a party (including the paralegal, clerical, and secretarial staff  
15 employed by such counsel), to a trier of fact or law in any forum in which the claims asserted in this  
16 action may be adjudicated or enforced and the administrators of that forum, and to “Qualified  
17 Persons.” A Qualified Person is a person who falls into one of the categories set forth below:

18           (a)       A party, or a current or former officer, director, or employee of a party  
19 deemed necessary by counsel to aid in the prosecution, defense or settlement of this action;

20           (b)       Experts or consultants (together with their staff) retained by such counsel to  
21 assist in the prosecution, defense or settlement of this action provided; however, that prior to  
22 disclosure of any “Confidential Information” to an expert or consultant, the party that wishes to  
23 make the disclosure shall affirm that the expert or consultant has not previously been retained by the  
24 non-disclosing party or a competitor of the non-disclosing party. (A competitor shall be defined as  
25 any discount variety retailer.) If the expert or consultant has been so retained, the parties shall meet  
26 and confer with each other and, if necessary, submit the issue to the Court prior to the disclosure to  
27 the expert or consultant of any “Confidential Information;”  
28

1 (c) Witnesses testifying at deposition or at any hearing in this matter either during  
2 their testimony or in preparation therefore; however, if a witness refuses to sign the Nondisclosure  
3 Agreement, the parties shall meet and confer with each other and, if necessary, submit the issue to  
4 the Court prior to the disclosure to the witness of any “Confidential Information;”

5 (d) Any person to whom disclosure is reasonably necessary to enforce any award  
6 or judgment rendered against any party in this proceeding; and

7 (e) Any other person ordered by the Court or as to whom all parties in writing  
8 agree.

9 8. Any person or entity to whom “Confidential Information” is disclosed  
10 pursuant to Subparagraphs 7 (a)-(e), above, shall, prior to receiving such Confidential Information,  
11 be provided with a copy of this Order and shall execute a Nondisclosure Agreement in the form set  
12 forth in **Attachment A** hereto, such forms to be maintained by counsel for the party sharing  
13 “Confidential Information” and undertaking to have such forms executed.

14 9. On the request of any party, any person who is not a Qualified Person shall be  
15 excluded from any deposition during the period in which “Confidential Information” is used,  
16 referred to or discussed.

17 10. The parties may further designate certain discovery material, testimony, or  
18 other information of an extraordinarily private, highly confidential, or propriety nature as  
19 “CONFIDENTIAL INFORMATION -- COUNSEL ONLY” (hereinafter “Counsel Only” Material  
20 in the manner described above. Such designation shall not be used routinely or to gain advantage in  
21 this litigation, but rather shall be used only in exceptional cases where the protections afforded by  
22 the “Confidential” classifications are insufficient. “Counsel Only” Material, and the information  
23 contained therein, shall be disclosed only to counsel for the parties (including the paralegal, clerical,  
24 and secretarial staff employed by such counsel) and to experts who execute **Attachment A**.  
25 “Counsel Only” Material may not be disclosed to opposing counsel’s clients pursuant to Professional  
26 Rules of Responsibility, Rule 3-700. If disclosure of “Counsel Only” Material is made pursuant to  
27 this paragraph, all other provisions in this Order with respect to confidentiality shall also apply.

28 11. The restrictions set forth in this Order shall not:

1 (a) Apply to any discovery matter which a party can show was lawfully  
2 possessed, obtained, or developed by it other than through discovery in this action;

3 (b) Apply to any information which lawfully is or lawfully becomes public  
4 knowledge in a manner that is not in violation of this Order;

5 (c) Operate as an admission by the recipient that any of the information contains  
6 or reflects “Confidential Information;”

7 (d) Prejudice in any way the right of any party or non-party to object on any basis  
8 to the production of discovery matter it considers not subject to discovery;

9 (e) Prejudice in any way the right of any party or non-party to seek a  
10 determination from the Court as to whether particular information shall be produced;

11 (f) Prevent the parties from entering into a written agreement to alter or waive the  
12 provisions or protections provided herein, generally or with respect to any “Confidential  
13 Information;”

14 (g) Prejudice in any way the right of any party or non-party to seek such  
15 additional or other protection as that party may deem appropriate with regard to the confidentiality  
16 of the information;

17 (h) Be construed to require any party to produce information that it considers  
18 privileged or otherwise not subject to discovery;

19 (i) Be deemed a waiver of any objections a party otherwise would have to any  
20 discovery request propounded in this action or a waiver of any third party’s claim to right of privacy.

21 12. This Order shall be without prejudice to the right of any party at any time after  
22 information is designated “Confidential Information” to file a motion with the Court, upon not less  
23 than ten (10) calendar days’ notice to all parties: (i) to challenge the designation of any particular  
24 document or information as Confidential or whether its use should be restricted, provided such party  
25 has first made a good-faith attempt to resolve such question with the designating party; or (ii) seek a  
26 separate protective order as to any particular document or information, including restrictions  
27 differing from those as specified herein. The Order shall not be deemed to prejudice the parties in  
28 any way in any future application for modifications of this Order.

1           13.     The parties will mark any document that they believe should be filed under  
2 seal as “Counsel Only” Material. Defendant’s use of such designations shall only apply to  
3 documents containing private, trade secret, business confidential, and proprietary information of the  
4 Defendant, the public disclosure of which would be detrimental to Defendant’s competitive interests  
5 or the privacy rights of its current and former employees. The designation of a document in a  
6 manner that warrants sealing shall be subject to a meet and confer requirement if objected to by the  
7 other party. The sealing requirements of Local Rule 141 will apply to any document so designated  
8 until and unless a Court orders that the documents are not subject to seal. Should Plaintiff desire to  
9 file any document so marked by Defendant (that is “Counsel-Only” Material), Defendant will  
10 prepare the “Notice of Request to Seal Documents,” a “Request to Seal Documents,” a proposed  
11 order, and all documents covered by the Request that are required by Local Rule 141(b). Plaintiff’s  
12 counsel shall provide the document(s) to be so submitted to Defendant’s counsel who will attend to  
13 submitting such documents in accordance with the provisions of Local Rule 141.

14           14.     The burden of establishing that any information designated as “Confidential  
15 Information” or “Counsel Only” Material meets the definitions set forth herein shall be on the party  
16 that seeks to uphold the designation. Any information or documents designated as “Confidential  
17 Information,” which are subject to sealing motion pursuant to Paragraph 13 shall be treated as  
18 “Confidential Information” in accordance with the terms of this Order until such time as the Court  
19 rules otherwise.

20           15.     All documents produced in this proceeding shall be used by the party to whom  
21 such documents are produced solely for purposes of the investigation and/or resolution of the claims  
22 arising in this action, any trial and appeal of this action, and the enforcement of any award thereon  
23 and for no other purpose.

24           16.     Pursuant to Federal Rule of Evidence 502(d) and (e), the parties agree to and  
25 the Court orders protection of privileged and otherwise protected documents and electronically  
26 stored information against claims of waiver (including as against third parties and in other federal  
27 and state proceedings) in the event they are produced during the course of this litigation, whether  
28 pursuant to a Court Order, a party’s discovery request, or informal production, as follows:



1 (a) The inadvertent production of documents by a Producing Party subject to a  
2 legally recognized claim of privilege, including without limitation the attorney-client privilege, and  
3 work-product doctrine, to a Receiving Party, shall in no way constitute the voluntary disclosure of  
4 such document, data or information.

5 (b) The inadvertent production of any document in this action shall not result in  
6 the waiver of any privilege, evidentiary protection, or other protection associated with such  
7 document as to the Receiving Party, or any third parties, and shall not result in any waiver, including  
8 subject matter waiver, of any kind.

9 (c) If, during the course of this litigation, a party determines that any document  
10 produced by another party is on its face subject to a legally recognizable privilege or evidentiary  
11 protection, the Receiving Party shall: (a) refrain from reading the document any more closely than is  
12 necessary to ascertain that it is privileged; (b) immediately notify the Producing Party in writing that  
13 it has discovered documents believed to be privileged or protected; (c) specifically identify the  
14 documents by Bates number range or hash value range, and, (d) where possible, return, sequester, or  
15 destroy all copies of such documents, along with any notes, abstracts or compilations of the content  
16 thereof, within five (5) days of discovery by the Receiving Party. Where such documents cannot be  
17 destroyed or separated it shall not be reviewed, disclosed, or otherwise used by the Receiving Party.  
18 Notwithstanding, the Receiving Party is under no obligation to search or review the Producing  
19 Party's documents to identify potentially privileged or work product protected documents.

20 (d) If the Producing Party intends to assert a claim of privilege or other protection  
21 over documents identified by the Receiving Party, the Producing Party will, within five (5) business  
22 days of receiving the Receiving Party's written notification, inform the Receiving Party of such  
23 intention in writing and shall provide the Receiving Party with a log for such document, data or  
24 information that is consistent with the requirements of the Federal Rules of Civil Procedure, setting  
25 forth the basis for the claim of privilege or other protection, and in the event, if any portion of the  
26 document does not contain privileged or protected information, the Producing Party shall also  
27 provide to the Receiving Party a redacted copy of the document that omits the information that the  
28 Producing Party believes is subject to a claim of privilege or other protection.

1 (e) If, during the course of this litigation, a party determines it has produced a  
2 document protected from discovery by a legally recognized claim of privilege or other protection,  
3 the Producing Party may notify the Receiving Party of such inadvertent production in writing, and  
4 demand the return of such documents. Such notice shall be in writing, however, it may be delivered  
5 orally on the record at a deposition, promptly followed up in writing. The Producing Party's written  
6 notice will identify the document, data and/or information inadvertently produced by bates number  
7 range or hash value range, the privilege or protection claimed, and the basis for the assertion of the  
8 privilege and shall provide the Receiving Party with a log for such document that is consistent with  
9 the requirements of the Federal Rules of Civil Procedure, setting forth the basis for the claim of  
10 privilege or other protection, and in the event any portion of the document that does not contain  
11 privileged or protected information, the Producing Party shall also provide to the Receiving Party a  
12 redacted copy of the document that omits the information that the Producing Party believes is subject  
13 to a claim of privilege or other protection. After receiving such written notification, the Receiving  
14 Party must, within five (5) business days of receiving the written notification, return, sequester, or  
15 destroy the specified document and any copies, along with any notes, abstracts, or compilations of  
16 the content thereof.

17 (f) To the extent that an inadvertently produced document has been loaded into a  
18 litigation review database, the Producing Party can elect to either (i) have the document returned or  
19 destroyed via an extraction of the electronic copies from the database; or (ii) have the document  
20 disabled from further use or otherwise rendered inaccessible to the Receiving Party in the litigation  
21 review database. If the Producing Party selections option (i), it shall bear the costs of the return or  
22 destruction of such electronic copies.

23 (g) To the extent that the information contained in a document subject to a claim  
24 of privilege or other protection has already been used in or described in other documents generated  
25 or maintained by the Receiving Party, then the Receiving Party will sequester such documents until  
26 the claim has been resolved. If the Receiving Party disclosed the specified document before being  
27 notified of its inadvertent production, it must take reasonable steps to retrieve it. The Producing  
28 Party shall preserve the specified document until the claim is resolved.

1 (h) The Receiving Party's return, sequestering, or destruction of such privileged  
2 or protected documents as provided herein will not act as a waiver of the Requesting Party's right to  
3 move for the production of the returned, sequestered, or destroyed documents on the ground that the  
4 documents are not, in fact, subject to a viable claim of privilege or protection. However, the  
5 Receiving Party is prohibited and estopped from arguing that the production of the documents in this  
6 matter acts as a waiver of an applicable privilege or evidentiary protection, that the disclosure of the  
7 documents was not inadvertent, that the Producing Party did not take reasonable steps to prevent the  
8 disclosure of the privileged documents or that the producing party failed to take reasonable or timely  
9 steps to rectify the error pursuant to Federal Rule of Civil Procedure 26(b)(5)(B), or otherwise.

10 (i) Either party may submit the specified documents to the Court under seal for a  
11 determination of the claim of privilege or other protection and will provide the Court with the  
12 grounds for the asserted privilege or protection. The Receiving Party may not use the documents for  
13 any purpose absent this Court's Order. Any party may request expedited treatment of any request  
14 for the Courts determination of the claim.

15 (j) Upon a determination by the Court that the specified documents are protected  
16 by the applicable privilege or evidentiary protection, and if the specified documents have been  
17 sequestered rather than returned or destroyed, the specified documents shall be returned or  
18 destroyed. The Court may also order the identification and/or review of documents that have been  
19 identified as being potentially subject to a legally recognized claim by search terms or other means.

20 (k) Nothing contained herein is intended to, or shall serve to limit a party's right  
21 and obligation to conduct a review of documents for relevance, responsiveness, or the segregation of  
22 privileged and/or protected information.

23 17. All "Confidential Information" or "Counsel-Only" information shall be  
24 returned to the Producing Party as follows:

25 (a) Within sixty (60) calendar days of the conclusion of the Litigation by  
26 settlement, dismissal or entry of judgment, and subject to sub-paragraphs (c) and (d) below, all  
27 "Confidential Information" or "Counsel-Only" information, including any and all copies (including  
28 electronically-stored copies), abstracts, summaries, physical media by which data was transmitted,

1 and readable reports or output from the physical media by which data was transmitted, shall be  
2 returned to the producing party. Counsel for each party shall additionally certify to counsel for the  
3 opposing party, in writing, that any and all such “Confidential Information” or “Counsel-Only”  
4 information, including any and all copies (including electronically-stored copies), abstracts,  
5 summaries, physical media by which data was transmitted, and readable reports or output from the  
6 physical media by which data was transmitted, or produced by the opposing party, has been returned.

7 (b) If “Confidential Information” or “Counsel-Only” information is furnished to  
8 outside experts or consultants pursuant to paragraph 7(b), the attorney for the party using such expert  
9 or consultant shall have the responsibility of ensuring, within sixty (60) calendar days of the  
10 termination of the litigation, that all such “Confidential Information” or “Counsel-Only” information  
11 including any and all copies (including electronically-stored copies), abstracts, summaries, physical  
12 media by which data was transmitted, and readable reports or output from the physical media by  
13 which data was transmitted, is returned to the producing party, and so certifying in writing as  
14 provided in sub-part (a) above.

15 (c) Counsel of record for the parties may indefinitely retain one copy of any part  
16 of the “Confidential Information” or “Counsel-Only” information produced by others that has  
17 become part of the official record of this litigation as well as abstracts or summaries of materials that  
18 reference “Confidential Information” or “Counsel-Only” information that contain counsels mental  
19 impressions or opinions. Such copy shall remain subject to the terms of this Protective Order and  
20 shall not be used by the Receiving Party for any other purpose whatsoever, including but not limited  
21 to, other litigation.

22 18. Under this Order, Professional Rule of Conduct 3-700 is inapplicable to the  
23 “Confidential Information” produced by the opposing side in discovery; and no copies (electronic or  
24 otherwise) of an opposing party’s “Confidential Information” shall be retained as part of any “client  
25 file” at the conclusion of this litigation.

26 19. This Order shall survive the final termination of this action and the Court shall  
27 retain jurisdiction to enforce, construe, or modify its terms for three (3) years after the final  
28 disposition of this action.

1 20. Once executed by all parties, the Stipulation shall be by treated by the Parties  
2 as an Order of the Court pending its formal approval by the Court.

3  
4 Dated: November 14, 2014

/s/ Alison J. Cubre  
LINDBERGH PORTER, JR.  
MATTHEW E. FARMER  
ALISON J. CUBRE  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
DOLLAR TREE STORES, INC.

5  
6  
7  
8 Dated: November 19, 2014

/s/ Violeta Diaz  
DAVID C. RANCAÑO  
VIOLETA DIAZ  
RANCAÑO & RANCAÑO  
Attorneys for Plaintiff  
MARIA SERPA

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13 **ORDER**

14  
15 The Court adopts the parties' foregoing stipulated protective and clawback order (also filed  
16 on the case docket as Doc. 9), with exceptions and/or adaptations pertaining to specific paragraphs  
17 as set forth below:

18 ¶13. Any requests to submit documents to this Court under seal shall be governed by Local Rule  
19 141 and must comply with and satisfy the requirements of that Rule;  
20

21 ¶16(h). "Requesting Party" in the initial sentence of Paragraph 16(h) is changed to "Receiving  
22 Party;"

23 ¶16(i). Any requests to submit documents to this Court under seal shall be governed by Local Rule  
24 141 and must comply with and satisfy the requirements of that Rule; furthermore, although any party  
25 may request the Court for an expedited determination of claims as set forth in this paragraph, the  
26 Court is not bound to honor such requests and generally will require compliance with applicable  
27 Local Rules and the Federal Rules of Civil Procedure;  
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¶18. The Court declines to adopt Paragraph 18 in its entirety;

¶19. The Court declines to retain jurisdiction to enforce, construe, or modify the terms of the instant stipulated protective and clawback order for a period of three (3) years after the final disposition of action; however, the Court shall retain jurisdiction for these purposes for a period of one (1) year after the final disposition of this action.

Finally, the Court retains the discretion to determine the appropriate mechanism(s) for resolving any disputes that may arise pursuant to any provision of the foregoing stipulated protective and clawback order.

IT IS SO ORDERED.

Dated: December 1, 2014

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE