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14 ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE

15  
16 **UNITED STATES DISTRICT COURT**  
17 **EASTERN DISTRICT OF CALIFORNIA**

18 LUKE HALTON and DENNIS BIER, )  
19 Individually and on behalf of All Other )  
20 Similarly Situated Current and Former )  
Employees, )  
21 Plaintiffs, )  
22 vs. )  
23 VALSPAR CORPORATION & )  
SUBSIDIARIES, a Delaware corporation, and )  
24 DOES 1 through 10, inclusive, )  
25 Defendants. )  
26 )  
27 )

Case No. 2:10-cv-02400-KJM-CKD  
**JOINT STIPULATION FOR PROTECTIVE  
ORDER REGARDING CONFIDENTIAL  
DISCOVERY AND ORDER**

1           The Plaintiffs named in the First Amended Class Action Complaint and Defendant Valspar  
2 Corporation (individually, a “Party”, and, collectively, the “Parties”), by and through their  
3 undersigned counsel for the above captioned action (“Action”), stipulate and agree as follows:

4           1.     Purpose. Until further order of the Court or stipulation of the Parties, any and all (a)  
5 documents and depositions which are produced, given, returned, or supplied by the Parties to this  
6 Action or the Parties’ experts; (b) extracts and summaries prepared from such materials; (c)  
7 information contained in or obtained from such materials; and/or (d) those portions of briefs,  
8 affidavits, memoranda, depositions, or other writings, including exhibits thereto, which contain or  
9 refer to such materials, shall be used solely for the prosecution, defense, or settlement of the Action  
10 (including any appeals) and shall be subject to this Stipulated Protective Order (hereinafter  
11 “Protective Order”).

12           2.     Types of Information Eligible For Protection. The following three types of  
13 information are eligible for protection under this Protective Order.

14           a.     Confidential Information. Any Party or non-party subject to subpoena issued  
15 in this matter (“Non-Party”) may, in good faith, designate as “Confidential,” in whole or in part,  
16 information, documents, materials or testimony which contain or reveal confidential personal  
17 information, or proprietary or other information treated as confidential by that Party in its business  
18 operations. Confidential information and documents (“Confidential Information”) shall include  
19 documents, portions of deposition transcripts, interrogatory answers, responses to requests for  
20 admission, and any other discovery materials designated as Confidential as set forth below. Any  
21 documents or information designated Confidential shall be treated as such, unless and until the  
22 attorneys of record in this Action agree in writing that the documents or information may be  
23 declassified or the Court rules to the contrary. This Paragraph shall be interpreted to be consistent  
24 with the procedures set forth below governing objections to “Confidential” designations.

25           b.     Highly Confidential Information. The Parties acknowledge that discovery  
26 may include information of an exceptionally sensitive nature, including proprietary business  
27 information. Accordingly, any Party or Non-Party may, in good faith, designate such exceptionally  
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1 sensitive information “Highly Confidential.” Highly Confidential information and documents  
2 (“Highly Confidential Information”) shall include documents, portions of deposition transcripts,  
3 interrogatory answers, responses to requests for admission, and any other discovery materials  
4 designated as Highly Confidential as set forth below. Any documents or information designated  
5 Highly Confidential shall be treated as such, unless and until the attorneys of record in this Action  
6 agree in writing that the documents or information may be declassified or the Court rules to the  
7 contrary. This Paragraph shall be interpreted to be consistent with the procedures set forth below  
8 governing objections to “Highly Confidential” designations.

9 c. Confidential Personnel Information. Defendant Valspar Corporation  
10 maintains information about its employees. Defendant maintains this information, such as personnel  
11 files and payroll data, in confidence. This information shall be designated “Confidential Personnel”  
12 and shall be treated as Highly Confidential information under the terms of this agreement. This  
13 Paragraph shall be interpreted to be consistent with the procedures set forth below governing  
14 objections to “Highly Confidential” designations.

15 3. Particularized Need That Must Be Addressed By Court Order: The designation of  
16 Confidential Information as defined in Paragraph 2(a), Highly Confidential Information as defined in  
17 Paragraph 2(b) and Confidential Personnel Information as defined in Paragraph 2(c), is required in  
18 order to protect the Parties from disclosure of information that may violate an individual’s right to  
19 privacy, negatively impact a Party’s business and/or competitive position because it would reveal  
20 confidential, trade secret, proprietary, financial or commercially sensitive information and/or breach  
21 an obligation of a Party to maintain the confidentiality of information. A Court Order is required in  
22 order to provide an enforcement mechanism between the Parties and with third parties allowed to  
23 access the information who are identified in Paragraph 6.

24 4. Method of Designating Documents Confidential or Highly Confidential. Any  
25 documents intended to be Confidential, Highly Confidential or Confidential Personnel shall be so  
26 designated by the producing Party by stamping “Confidential,” “Highly Confidential,” or  
27 “Confidential Personnel” on the first page of the document.  
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- (a) Documents produced prior to the entry of this Order may be designated Confidential, Highly Confidential, or Confidential Personnel by the producing Party within ten (10) business days of the date of the Order. Any such designation shall be in writing delivered to the receiving Party.
- (b) If a portion of deposition testimony is designated Confidential, Highly Confidential, or Confidential Personnel at the time given, the reporter shall mark that portion of the transcript accordingly.
- (c) Employment records produced pursuant to authorizations shall automatically be deemed Confidential Personnel.
- (d) The producing party may designate Electronically Stored Informed (ESI) as Confidential, Highly Confidential, or Confidential Personnel by marking the produced disc or drive with the appropriate designation or by accompanying the ESI production with correspondence which communicates the appropriate designation.

5. Subsequent Designation. The failure of a producing Party to designate information or documents as “Confidential,” “Highly Confidential,” or “Confidential Personnel” at the time of the initial production of the same shall not prejudice the producing Party’s right to thereafter designate such information or documents if the initial failure to designate was inadvertent. A producing Party may designate any information or documents previously produced without designation by providing written notice of the same to each recipient of the information or documents within thirty (30) days of discovery of the inadvertent production of undesignated information or documents. Upon such designation, the producing Party shall re-produce the information or documents in a properly designated form. Upon production of the re-produced information or documents, recipient Parties shall promptly take reasonable steps to ensure that all undesignated copies of such information or documents are destroyed and replaced with properly designated copies of such information or documents by the producing Party.

6. Contesting “Confidential” and/or “Highly Confidential” Designations. A receiving Party may object to the designation of information or documents as Confidential or Highly Confidential, or the failure of a producing Party to so designate information or documents by notifying counsel for the producing Party in writing at any time during the litigation. The Parties agree to engage in good faith informal discussions concerning any dispute over the designation of information or documents as “Confidential” or “Highly Confidential.” If the matter is not resolved by the Parties themselves, the Party challenging the designated status of information or documents

1 claimed to be restricted by this Protective Order shall have thirty (30) days from the date of written  
2 notice of objection in which to make a motion challenging the applicability of this Protective Order  
3 with respect to such information or documents. The Parties shall treat the disputed information or  
4 documents as Confidential or Highly Confidential until the Court rules or the Parties reach a written  
5 agreement otherwise. The Party proposing confidentiality designations has the burden of justifying  
6 the designations.

7           7.       Persons Allowed Access to Confidential Information. Information and documents  
8 designated Confidential shall be maintained in confidence and shall not be disclosed or made  
9 available to any person other than:

- 10                   (a)       The attorneys of record in this Action and Defendants' in-house counsel and  
11                   their associated attorneys, legal assistants, and staff members working on the  
12                   Action;
- 13                   (b)       Independent consultants and/or experts retained by the Parties to work on the  
14                   Action, provided, however, that before any such consultant or expert is shown  
15                   or receives any documents or information, the consultant or expert must agree  
16                   in writing to abide by the terms of this Protective Order;
- 17                   (c)       Named Plaintiffs, class member (in the event that the class is certified),  
18                   Defendant Valspar Corporation, and any current and former officers,  
19                   directors, employees, advisors, or agents of the Parties, who assist the  
20                   attorneys of record in this Action, provided, however, that named Plaintiffs  
21                   and class members who are former employees of Defendant Valspar  
22                   Corporation may only be shown Confidential Information and may not be  
23                   given copies of information or documents containing such Information,  
24                   provided, further, that before any person identified in category 8(c) receives  
25                   any information or documents, he or she must agree in writing to abide by the  
26                   terms of this Protective Order by executing Exhibit A attached hereto;
- 27                   (d)       A person who prepared or received the Confidential Information prior to its  
28                   production in the action, provided that before any person receives or is given  
                    access to any Confidential Information pursuant to this section, he or she shall  
                    execute Exhibit A attached hereto, which includes an agreement to be bound  
                    by this Protective Order;
- (e)           (i)       A deponent during a deposition or a witness on examination in  
                    a hearing or at trial, subject to any objection to such disclosure by  
                    counsel for the Party that produced the Confidential Information, and  
                    provided that the witness shall be requested on the record to execute  
                    Exhibit A attached hereto, agreeing to be bound by the Protective  
                    Order, before any Confidential Information may be disclosed to the  
                    witness; or

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(ii) a potential deponent or witness who the examining counsel believes in good faith has relevant information specifically regarding the Confidential Information that was not obtained in violation of this Protective Order; provided that prior to the time that any such person is given access to Confidential Information, such person shall be provided with a copy of this Protective Order and shall execute Exhibit A hereto agreeing to be bound by this Protective Order, which shall be retained by counsel making the disclosure of the Confidential Information, and provided, further, that named Plaintiffs and class members who are former employees of Defendant Valspar Corporation may only be shown Confidential Information and may not be given copies of information or documents containing such Information, and

provided, further, that persons identified in category 8(e)(i) that refuse on the record to execute Exhibit A and be bound by its terms shall not be shown any Confidential Information without consent on the record from counsel for the Party who designated the information Confidential; and provided, further, that persons identified in category 8(e)(i) that refuse on the record to execute Exhibit A and be bound by its terms who are shown Confidential Information after consent has been given on the record by counsel for the Party who designated the information Confidential, shall not be permitted to retain any document designated as containing Confidential Information, and provided, further, that no Plaintiff shall be shown Confidential Information without executing Exhibit A agreeing to be bound by the terms of Exhibit A, and

provided, further, that persons identified in category 8(e)(ii) may only be shown Confidential Information but may not be given copies of, or allowed to retain, documents containing such Information;

- (f) Clerical and data processing personnel involved in the production, reproduction, organizing, filing, coding, cataloging, converting, storing, retrieving, and review of Confidential Information, to the extent reasonably necessary to assist the Parties in connection with the action;
- (g) Stenographic reporters engaged for depositions or other proceedings necessary to the conduct of the Action;
- (h) Any third-Party mediator jointly selected by the Parties or appointed by the Court;
- (i) Such persons as the attorneys of record in this Action shall mutually consent to in writing or on the record prior to the proposed disclosure; and
- (j) The Court and its authorized staff, and other such persons as the Court may direct as authorized to receive Confidential Information.

Nothing contained in the Protective Order shall prevent any Party from disclosing its own Confidential information and documents as may be consistent with applicable law.

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2 8. Persons Allowed Access To Highly Confidential Information. Information and  
3 documents designated Highly Confidential shall be maintained in confidence and shall not be  
4 disclosed or made available to any person other than:

- 5 (a) The attorneys of record in this Action and their associated attorneys, legal  
6 assistants, and staff members working on the Action;
- 7 (b) Any person involved in the preparation of or who had authorized access to the  
8 contents of the Highly Confidential information or document;
- 9 (c) Independent consultants and/or experts retained by the Parties to work on the  
10 Action, provided, however, that before any such consultant or expert is shown  
11 or receives any information or documents, the consultant or expert must agree  
12 in writing to abide by the terms of this Protective Order;
- 13 (d) A person who prepared or received the Highly Confidential Information prior  
14 to its production in the action, provided that before any person receives or is  
15 given access to any Highly Confidential Information pursuant to this section,  
16 he or she shall execute Exhibit A attached hereto agreeing to be bound by this  
17 Protective Order;
- 18 (e) A deponent during a deposition or a witness on examination in a hearing or at  
19 trial, subject to any objection to such disclosure by counsel for the Party that  
20 produced the Highly Confidential Information, and provided that the witness  
21 shall be requested on the record to execute Exhibit A attached hereto agreeing  
22 to be bound by the Protective Order, before any Highly Confidential  
23 Information may be disclosed to the witness; provided, further, that named  
24 Plaintiffs and class members who are former employees of Defendant Valspar  
25 Corporation may only be shown Highly Confidential Information and may not  
26 be given copies of information or documents containing such Information,  
27 provided, further, that any person identified in this section 9(e) that refuses on  
28 the record to execute Exhibit A and be bound by its terms shall not be shown  
any Highly Confidential Information or Confidential Personnel Information,  
without consent on the record from counsel for the Party who designated the  
information Highly Confidential or Confidential Personnel; and provided,  
further, that persons identified in category 9(e) that refuse on the record to  
execute Exhibit A and be bound by its terms who are shown Highly  
Confidential Information or Confidential Personnel Information after consent  
has been given on the record by counsel for the Party who designated the  
information Highly Confidential Information or Confidential Personnel  
Information, shall not be permitted to retain any document designated as  
containing Highly Confidential Information or Confidential Personnel  
Information.
- (f) Clerical and data processing personnel involved in the production,  
reproduction, organizing, filing, coding, cataloging, converting, storing,  
retrieving, and review of Highly Confidential Information, to the extent  
reasonably necessary to assist the Parties in connection with the action; and
- (g) Stenographic reporters engaged for depositions or other proceedings necessary  
to the conduct of the Action;

- 1 (h) Any third-Party mediator jointly selected by the Parties or appointed by the Court;
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- 3 (i) Such persons as the attorneys of record in this Action shall mutually consent to in writing or on the record prior to the proposed disclosure; and
- 4 (j) The Court and its authorized staff, and other such persons as the Court may direct as authorized to receive Highly Confidential Information.
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6 Nothing contained in the Protective Order shall prevent any Party from disclosing its own Highly  
7 Confidential information and documents as may be consistent with applicable law.

8 Named Plaintiffs and class members may not be shown Highly Confidential information  
9 unless the Named Plaintiff or class member is a person who prepared or received the Highly  
10 Confidential Information prior to its production in the action, provided that before any person  
11 receives or is given access to any Confidential Information pursuant to this section, he or she shall  
12 execute Exhibit A attached hereto agreeing to be bound by this Protective Order. Named Plaintiffs  
13 and class members may not be shown Confidential Personnel information unless: (i) the personnel  
14 information pertains to that specific named Plaintiff or class member; or (ii) the employee who the  
15 personnel information pertains to waives confidentiality of that information in writing;

16 9. Use of Confidential Information in Deposition. No person may refuse to answer any  
17 question at a deposition on the sole ground that the question requires the person to reveal  
18 Confidential or Highly Confidential material. The deposition must proceed upon the following  
19 basis: Prior to answering the deposition question or questions all persons present shall be advised of  
20 the terms and conditions of this Stipulation and Protective Order and, at the request of the  
21 designating Party, all persons not authorized to receive Confidential or Highly Confidential material  
22 under this Stipulation and Protective Order shall leave the room during the time in which this  
23 material is disclosed or discussed.

24 10. Use of Confidential Information at Trial. The use of Confidential or Highly  
25 Confidential Information shall be governed by Local Rule 141.1(b)(2).

26 11. No Publication. No Confidential or Highly Confidential information or documents  
27 shall be published or disseminated by the Parties or their counsel without the permission of the Party  
28 designating such information or documents as Confidential or Highly Confidential. Portions of



1 affidavits and briefs quoting Highly Confidential information or documents shall not be published or  
2 disseminated by the Parties or their counsel without the permission of the Party designating such  
3 information, documents or materials as Confidential or Highly Confidential.

4       12.     Disclosures Required By Law. If a Party who received Confidential Information or  
5 Highly Confidential Information is later required by law, regulation, subpoena, or order to disclose  
6 or provide Confidential Information or Highly Confidential Information to any person or to any  
7 judicial, governmental, or administrative body, the Party being required to disclose or provide the  
8 Confidential Information or Highly Confidential Information (the “Disclosing Party”) shall give  
9 written notice of such proposed disclosure to the attorneys of record of the producing Party and the  
10 other Parties to this Action at least five (5) days before such disclosure. If the law, regulation, or  
11 order requires disclosure in a way that renders five (5) days’ notice impracticable, the Disclosing  
12 Party shall give such notice by telephone as soon as practicable, but in any event before disclosure is  
13 made.

14       13.     Court Filings. Any information or documents designated Confidential or Highly  
15 Confidential, as well as portions of affidavits and briefs quoting or referencing Confidential  
16 Information or Highly Confidential Information may be filed with the Court only after a sealing  
17 order is obtained in compliance with Local Rule 141. If a receiving Party’s request to seal pursuant  
18 to Local Rule 141 is denied by the Court, the receiving Party may file the information in the public  
19 record unless otherwise instructed by the Court.

20       14.     After the Litigation. The obligations of this Stipulated Protective Order are  
21 continuing and shall not terminate at the conclusion of this litigation. Upon settlement or final  
22 determination of this litigation, all Confidential Information or Highly Confidential Information and  
23 all available copies, summaries, compilations, abstracts or any other document or material setting  
24 forth the contents of any such information or documents shall be returned to the Party who produced  
25 such Confidential Information or Highly Confidential Information within sixty (60) days after  
26 litigation is concluded. A Party who has received Confidential or Highly Confidential information  
27 or documents may destroy electronic copies of such information or documents in their possession  
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1 within sixty (60) days after litigation is concluded, provided that Party certifies in writing to the  
2 Party who produced such information or documents that such electronic information or documents,  
3 and any and all copies, summaries, compilations, abstracts or any other document or material setting  
4 forth the contents of any such information or documents, have been fully and completely deleted and  
5 destroyed from any and all electronic systems and/or storage media. This Court will retain  
6 jurisdiction over enforcement of the terms of this Protective Order for sixty (60) days after litigation  
7 is concluded or until the Clerk has closed the action, which ever date occurs later.

8 15. Work Product and Briefs. Counsel may maintain their work product and all briefs,  
9 pleadings or other filings with the Court that include information or documents designated  
10 Confidential or Highly Confidential, but these information or documents shall remain subject to the  
11 terms of this Protective Order.

12 16. No Waiver of Confidentiality, Highly Confidential, Attorney-Client Privilege or  
13 Work Product Doctrine. Nothing in this Stipulation and Order shall be deemed to require disclosure  
14 of Confidential Information, Highly Confidential Information, or material protected by the attorney-  
15 client privilege, the work product doctrine, or any other applicable privileges. The inadvertent  
16 production of any document during this litigation shall be without prejudice to any claim of  
17 confidentiality, Highly Confidential status, attorney-client privilege, work product doctrine, or any  
18 other legally recognized privilege, and the producing Party shall not be held to have waived any  
19 rights by an inadvertent production. If the Party who inadvertently produced such documents  
20 demands return of the document on the grounds that it is privileged and/or work product, the Party to  
21 whom the document has been produced shall return the materials or document promptly and not  
22 retain any copies, summaries or other abstracts. The Party to whom the privileged or protected  
23 materials were produced may file a motion to challenge the claim of privilege or protection and to  
24 compel production of the document or materials; lacking that, the demanded documents and all  
25 copies shall be returned to the Parties that produced them.

26 17. Limitations. Nothing in this Stipulation and Order shall be construed to limit any  
27 Party from opposing discovery on any grounds otherwise available. Nor shall anything in this  
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1 Stipulation and Order restrict a Party or its trial counsel from using or disclosing information that  
2 they already possess or may acquire by proper means in the future independent of the formal  
3 discovery process in this Action. Further, the Parties do not intend to waive any rights via this  
4 Stipulation with regard to the manner in which Court proceedings are conducted and the use of  
5 Confidential or Highly Confidential documents at trial. Nothing in this Stipulated Protective Order  
6 shall bar or otherwise restrict any attorney from rendering advice to a Party-client in this Action and,  
7 in the course thereof, relying upon such attorneys' examination of "Confidential" and/or "Highly  
8 Confidential" information, documents, materials and testimony; provided, however, that in rendering  
9 such advice and in otherwise communicating with such client, the attorney shall not disclose the  
10 specific contents of any "Confidential" or "Highly Confidential" information, documents, materials  
11 and testimony to any unauthorized person.

12           18.    Disclosure. Should any "Confidential" or "Highly Confidential" information,  
13 documents, materials or testimony be disclosed, through inadvertence or otherwise, by any receiving  
14 Party to any person or entity not authorized to receive or see such information, documents, materials  
15 or testimony under the terms of this Stipulated Protective Order, the Party responsible for such  
16 disclosure shall (a) use its best efforts to obtain the return of any such "Confidential" or "Highly  
17 Confidential" information, documents, materials or testimony; (b) within three (3) business days of  
18 the discovery of such disclosure, inform the unauthorized recipient in writing of the terms of this  
19 Protective Order, request immediate return of the material in question, and request that the  
20 unauthorized recipient agree to be bound by the terms of this Protective Order; (c) within five (5)  
21 business days of the discovery of such disclosure, inform counsel for all Parties in this Action in  
22 writing of the fact and circumstances of the unauthorized disclosure, all efforts made to recover any  
23 "Confidential" or "Highly Confidential" information, documents, materials or testimony, and the  
24 results of such efforts; and (d) within seven (7) business days of the discovery of such disclosure,  
25 and provided that efforts to secure the return of the material in question are unsuccessful, inform the  
26 Court in writing of the fact and circumstances of the unauthorized disclosure and all efforts made to  
27 recover any "Confidential" or "Highly Confidential" information, documents, materials or  
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testimony, and request that the Court direct the unauthorized recipient to return the material(s) in question.

19. Modification. This Stipulation and Order does not prevent disclosure beyond its terms if the producing Party consents to the disclosure in writing, or if the Court orders such a disclosure. Further, the Parties may modify this Agreement in writing and with approval by the Court. Any Party may request modification of this Order from the Court, after written notice to the other Party.

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Dated: October 26, 2011

WINSTON & STRAWN LLP

By: /s/ Emilie C. Woodhead (as authorized on 10/26/11)  
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Attorneys for Defendant,  
VALSPAR CORPORATION

Dated: November 17, 2011

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By: /s/ Shawn Khorrami (as authorized on 11/17/11)  
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Dated: \_\_\_\_\_, 2011

POGUST, BRASLOW & MILLROOD LLC

By: \_\_\_\_\_

Andrew J. Sciolla (*Pro Hac Vice*)  
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Attorneys for Plaintiffs,  
LUKE HALTON and DENNIS BIER

**ORDER**

IT IS SO ORDERED.

Dated: November 21, 2011



\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**  
**AGREEMENT TO BE BOUND BY A PROTECTIVE ORDER**

The undersigned hereby acknowledges and declares, subject to the penalty of perjury, that he or she has received a copy of the Joint Stipulated Protective Order Regarding Confidential Discovery Matters in Luke Halton, et al. v. Valspar Corporation, et. al., Case No. 2:10-CV-02400, has read such Joint Stipulated Protective Order Regarding Confidential Discovery Matters, agrees to be bound by all of the terms thereof, and further agrees that the United States District Court for the Eastern District of California may exercise jurisdiction over him/her to enforce such Joint Stipulated Protective Order Regarding Confidential Discovery Matters, as necessary.

Dated: \_\_\_\_\_  
SIGNATURE  
\_\_\_\_\_  
PRINT NAME