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10 DOLLAR TREE STORES, INC.

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 SHEA HARDIN,

14 Plaintiff(s),

15 v.

16 DOLLAR TREE STORES, INC., and
17 DOES 1 TO 100

18 Defendant(s).

Case No.: 2:16-cv-02432-JAM-EFB

(Nevada County Superior Court Case No.
CU16-081849)

STIPULATED PROTECTIVE ORDER
[FRCP RULE 26(C)(1); L.R. 141.1(B)(1)
& 143]

Discovery Matter

Hon. Edmund F. Brennan
U.S. Magistrate Judge
(pursuant to L.R. 302(c)(1))

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20
21 Plaintiff SHEA HARDIN (“Plaintiff”) and Defendant DOLLAR TREE
22 STORES, INC. (“Defendant”) jointly submit this Stipulated Protective Order
23 pursuant to Federal Rules of Civil Procedure, Rule 26(c)(1), and Local Rules
24 141.1(b)(1) and 143, limiting the use and disposition of certain information and
25 documents during litigation of this matter. The parties agree that discovery in this
26 action may yield documents and information of a sensitive and confidential nature
27 that may be subject to discovery in the proceedings in this matter but which should
28 not be made available to the public generally. As a result, the parties have agreed to

STIPULATED PROTECTIVE ORDER

HARDIN v. DOLLAR TREE STORES, INC.
CASE NO.: 2:16-cv-02432-JAM-EFB

1 this jointly submitted Stipulated Protective Order and request that it be adopted by
2 order of this Court.

3 **1. PURPOSES AND LIMITATIONS**

4 Disclosure and discovery in this action is likely to involve production of
5 confidential, proprietary, or trade secret information for which special protection
6 from public disclosure and from use for any purpose other than prosecuting this
7 litigation may be warranted. Specifically, the parties anticipate that disclosure and
8 discovery will involve production of all or a portion of:

- 9 a. Defendant's store associates handbooks, manuals, and similar
10 documents reflecting Defendant's confidential and proprietary policies
11 and operational procedures, including, without limitation, Defendant's
12 Store Associate Handbook in effect at the time of the incident giving
13 rise to this litigation.
- 14 b. Manuals and documents reflecting Defendant's confidential and
15 proprietary procedure pertaining to employee and customer safety, risk
16 management, and loss prevention, including, without limitation,
17 Defendant's Safety Manual in effect at the time of the incident giving
18 rise to this litigation.
- 19 c. Documents pertaining to Defendant's policies and procedures for
20 reporting and investigating customer accidents, and handling customer
21 claims, including, without limitation, guidelines and directives prepared
22 by Defendant for reporting customer accidents.

23 It is the parties intent that the records and information described above may be
24 designated by the Defendant as CONFIDENTIAL (pursuant to Sections 3.3 and 6)
25 and shall be considered Protected Material under this Order (as defined in Section
26 3.14), subject to the right of any other party to challenge such designation pursuant
27 to Section 7.

28 ///

1 Accordingly, the parties hereby stipulate to and petition the Court to enter the
2 following Stipulated Protective Order. The parties acknowledge that this Order does
3 not confer blanket protections on all disclosures or responses to discovery and that
4 the protection it affords from public disclosure and use extends only to the limited
5 information or items that are entitled to confidential treatment under the applicable
6 legal principles. The parties further acknowledge, as set forth in Section 13.3, below,
7 that this Stipulated Protective Order does not entitle them to file confidential
8 information under seal; Local Rule 141 sets forth the procedures that must be
9 followed and the standards that will be applied when a party seeks permission from
10 the court to file material under seal.

11
12 **2. GOOD CAUSE STATEMENT**

13 In light of the nature of the claims and allegations in this case and the parties’
14 representations that discovery in this case will involve the production of confidential,
15 proprietary, or trade secret information and documents, and in order to expedite the
16 flow of information, to facilitate the prompt resolution of disputes over
17 confidentiality of discovery materials, to adequately protect information the parties
18 are entitled to keep confidential, to ensure that the parties are permitted reasonable
19 necessary uses of such material in connection with this action, to address their
20 handling of such material at the end of the litigation, and to serve the ends of justice,
21 a protective order for such information is justified in this matter. Federal Rules of
22 Civil Procedure, Rule 26(c)(1) states in pertinent part, that the Court, upon a showing
23 of good cause may “issue an order to protect a party from annoyance,
24 embarrassment, oppression, or undue burden or expense.” In the instant matter,
25 Defendant’s confidential documents contain proprietary, confidential, and trade
26 secret information relating to Defendant’s business practices and its safety protocols.
27 Defendant derives independent economic value from maintaining the confidentiality
28 of the policies and procedures set forth in these confidential documents.

1 Defendant is a retailer in the discount department store industry. The
2 discount retail industry is very competitive. As a result of years of investing time
3 and money in research and investigation, Defendant developed the policies contained
4 in the confidential documents for the purposes of maintaining the security and
5 accessibility of its stores and merchandise, providing quality customer service, and
6 ensuring the safety of its employees and customers. These policies and procedures,
7 as memorialized in the confidential documents, were created and generated by
8 Defendant for Defendant, and are used for the purposes of maintaining safety at its
9 stores and creating efficient and organized work environments for its customers and
10 employees. As a result, Defendant is able to minimize the waste of any resources,
11 which is a key factor in generating profitability for its business.

12 Defendant derives economic value from maintaining the secrecy of its
13 confidential documents. If disclosed to the public, the proprietary and trade secret
14 information contained in Defendant's confidential documents would reveal
15 Defendant's internal operations and could potentially be used by competitors as a
16 means to compete for its customers, interfere with its business plans, and thereby
17 gain unfair business advantages. If Defendant's safety protocols and policy and
18 procedure manuals were revealed to the general public, it would hinder Defendant's
19 ability to effectively resolve and minimize liability claims, and its goal of protecting
20 its customers and employees from theft and other crimes. Unrestricted or unprotected
21 disclosure of such information would result in prejudice or harm to Defendant by
22 revealing its competitive confidential information, which has been developed at
23 Defendant's expense and which represents valuable tangible and intangible assets.
24 Accordingly, the parties respectfully submit that there is good cause for the entry of
25 this Protective Order.

26 The parties shall not designate any information/documents as confidential
27 without a good faith belief that such information/documents have been maintained in
28

1 a confidential, non-public manner, and that there is good cause or a compelling
2 reason why it should not be part of the public record of this case.

3
4 **3. DEFINITIONS**

5 3.1 Action: The instant action: *Shea Hardin v. Dollar Tree Stores, Inc., et al.*,
6 2:16-cv-02432-JAM-EFB (Nevada County Superior Court Case No. CU16-081849).

7 3.2 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 3.3 “CONFIDENTIAL” Information or Items: information (regardless of how
10 it is generated, stored or maintained) or tangible things that qualify for protection
11 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
12 Cause Statement.

13 3.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
14 support staff).

15 3.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 3.6 Disclosure or Discovery Material: all items or information, regardless of
19 the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 3.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this Action.

25 3.8 House Counsel: attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.

28 3.9 Non-Party: any natural person, partnership, corporation, association, or

1 other legal entity not named as a Party to this action.

2 3.10 Outside Counsel of Record: attorneys who are not employees of a party
3 to this Action but are retained to represent or advise a party to this Action and have
4 appeared in this Action on behalf of that party or are affiliated with a law firm which
5 has appeared on behalf of that party, and includes support staff.

6 3.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).

9 3.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

11 3.13 Professional Vendors: persons or entities that provide litigation support
12 services (e.g., photocopying, videotaping, translating, preparing exhibits or
13 demonstrations, and organizing, storing, or retrieving data in any form or medium)
14 and their employees and subcontractors.

15 3.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”

17 3.15 Receiving Party: a Party that receives Disclosure or Discovery Material
18 from a Producing Party.

19
20 **4. SCOPE**

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

1 Moreover, the protections conferred by the Order do not cover the following
2 information: (a) any information that is in the public domain at the time of disclosure
3 to a Receiving Party or becomes part of the public domain after its disclosure to a
4 Receiving Party as a result of publication not involving a violation of this Order,
5 including becoming part of the public record through trial or otherwise; and (b) any
6 information known to the Receiving Party prior to the disclosure or obtained by the
7 Receiving Party after the disclosure from a source who obtained the information
8 lawfully and under no obligation of confidentiality to the Designating Party. Any use
9 of Protected Material at trial shall be governed by a separate agreement or order.
10

11 **5. DURATION**

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be
15 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
16 or without prejudice; and (2) final judgment herein after the completion and
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
18 including the time limits for filing any motions or applications for extension of time
19 pursuant to applicable law.
20

21 **6. DESIGNATING PROTECTED MATERIAL**

22 6.1 Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Non-Party that designates information or items for protection
24 under this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards as set forth in Sections 1 and 2 above. The
26 Designating Party must designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify so that other
28 portions of the material, documents, items, or communications for which protection

1 is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

10 6.2 Manner and Timing of Designations.

11 Except as otherwise provided in this Order (see, e.g., second paragraph of
12 Section 6.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
13 Material that qualifies for protection under this Order must be clearly so designated
14 before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions), that the Producing Party affix at a
18 minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”),
19 to each page that contains protected material. If only a portion or portions of the
20 material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be
27 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
28 it wants copied and produced, the Producing Party must determine which documents,

1 or portions thereof, qualify for protection under this Order. Then, before producing
2 the specified documents, the Producing Party must affix the “CONFIDENTIAL
3 legend” to each page that contains Protected Material. If only a portion or portions of
4 the material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the
6 margins).

7 (b) for testimony given in depositions that the Designating Party identifies on
8 the record, before the close of the deposition as protected testimony.

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

15 6.3 Inadvertent Failures to Designate.

16 If timely corrected, an inadvertent failure to designate qualified information or
17 items does not, standing alone, waive the Designating Party’s right to secure
18 protection under this Order for such material. Upon timely correction of a
19 designation, the Receiving Party must make reasonable efforts to assure that the
20 material is treated in accordance with the provisions of this Order.

21

22 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 7.1 Timing of Challenges.

24 Any Party or Non-Party may challenge a designation of confidentiality at any
25 time that is consistent with the Court’s Scheduling Order.

26 7.2 Meet and Confer.

27 The Challenging Party shall initiate the dispute resolution process under Local
28 Rule 37-1 et seq.

1 7.3 The burden of persuasion in any such challenge proceeding shall be on the
2 Designating Party. Frivolous challenges, and those made for an improper purpose
3 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
4 expose the Challenging Party to sanctions. Unless the Designating Party has waived
5 or withdrawn the confidentiality designation, all parties shall continue to afford the
6 material in question the level of protection to which it is entitled under the Producing
7 Party’s designation until the Court rules on the challenge.
8

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

10 8.1 Basic Principles.

11 A Receiving Party may use Protected Material that is disclosed or produced by
12 another Party or by a Non-Party in connection with this Action only for prosecuting,
13 defending, or attempting to settle this Action. Such Protected Material may be
14 disclosed only to the categories of persons and under the conditions described in this
15 Order. When the Action has been terminated, a Receiving Party must comply with
16 the provisions of Section 14 below.

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

20 8.2 Disclosure of “CONFIDENTIAL” Information or Items.

21 Unless otherwise ordered by the court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or item
23 designated “CONFIDENTIAL” only to:

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

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

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action;

3 (d) the Court and its personnel;

4 (e) court reporters and their staff;

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

7 (g) during their depositions, witnesses, and attorneys for witnesses, in the
8 Action to whom disclosure is reasonably necessary; and

9 (h) any mediator or settlement officer, and their supporting personnel,
10 mutually agreed upon by any of the parties engaged in settlement discussions.

11
12 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

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,” that Party must:

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with
26 the subpoena or court order shall not produce any information designated in this
27 action as “CONFIDENTIAL” before a determination by the court from which the
28 subpoena or order issued, unless the Party has obtained the Designating Party’s

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

6
7 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
8 **PRODUCED IN THIS LITIGATION**

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

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

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

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

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

26 (c) If a Non-Party represented by counsel fails to commence the process called
27 for by ~~Local Rules 45-1 and 37-1, et seq.~~ to object or seek a protective order within
28 14 days of receiving the notice and accompanying information or fails

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

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

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

22
23 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR**
24 **OTHERWISE PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
3 parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement into this Protective Order.

6
7 **13. MISCELLANEOUS**

8 **13.1 Right to Further Relief.**

9 Nothing in this Order abridges the right of any person to seek its modification
10 by the Court in the future.

11 **13.2 Right to Assert Other Objections.**

12 No Party waives any right it otherwise would have to object to disclosing or
13 producing any information or item on any ground not addressed in this Protective
14 Order. Similarly, no Party waives any right to object on any ground to use in
15 evidence of any of the material covered by this Protective Order.

16 **13.3 Filing Protected Material.**

17 A Party that seeks to file under seal any Protected Material must comply with
18 applicable Local Rules and with any pertinent orders of the assigned District Judge
19 and Magistrate Judge, including any procedures adopted under the Pilot Project for
20 the Electronic Submission and Filing of Under Seal Documents. Protected Material
21 may only be filed under seal pursuant to a court order authorizing the sealing of the
22 specific Protected Material at issue. If a Party's request to file Protected Material
23 under seal is denied by the court, then the Receiving Party may file the information
24 in the public record unless otherwise instructed by the court.

25 **13.4 No Waiver of Right to Seek Additional Orders**

26 Nothing in this Order shall be construed to affect a waiver of any Party's right
27 to seek later, additional Protective Orders for documents and information not within
28 the scope of this Order.

1 **14. FINAL DISPOSITION**

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

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

23 Dated: September 20, 2017

FIELDER, FIELDER & FIELDER

24
25 By: /s/ Scott L. Fielder
26 SCOTT L. FIELDER, Esq.
27 Attorney for Plaintiff,
28 SHEA HARDIN

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Dated: September 20, 2017

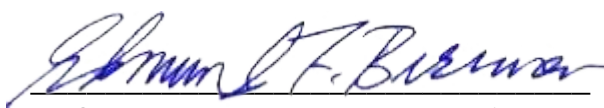
THARPE & HOWELL, LLP

By: /s/ Roger W. Backlar
CHARLES D. MAY
ROGER W. BACKLAR
Attorneys for Defendant,
DOLLAR TREE STORES, INC.

Per Local Rule 131(e), I, Roger W. Backlar, the filer of this document, attest that all other signatories listed above concur in the filing's contents and authorized the filing with their signature on September 20, 2017.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: September 26, 2017


HON. EDMUND F. BRENNAN
U.S. MAGISTRATE JUDGE