

1 NOSSAMAN LLP  
 2 VERONICA M. GRAY (SBN 72572)  
 3 vgray@nossaman.com  
 4 ANDREW C. CRANE (SBN 285211)  
 5 acrane@nossaman.com  
 6 18101 Von Karman Avenue, Suite 1800  
 7 Irvine, CA 92612  
 8 Telephone: 949.833.7800  
 9 Facsimile: 949.833.7878

10 S. ASHAR AHMED (SBN 256711)  
 11 aahmed@nossaman.com  
 12 50 California Street, 34th Floor  
 13 San Francisco, CA 94111  
 14 Telephone: 415.398.3600  
 15 Facsimile: 415.398.2438

16 Attorneys for Plaintiffs and Counter-Defendants  
 17 ICE Consulting, Inc.; Uzair Sattar;  
 18 and Derick Needham

19 UNITED STATES DISTRICT COURT  
 20 NORTHERN DISTRICT OF CALIFORNIA  
 21 SAN FRANCISCO DIVISION

22 ICE CONSULTING, INC., UZAIR  
 23 SATTAR, and DERICK NEEDHAM  
 24  
 25 Plaintiffs and Counter-  
 26 Defendants,  
 27  
 28 v.  
 29 GAVIN JENSEN,  
 30 Defendant and Counter-  
 31 Claimant.

Case No. 3:16-cv-04349-EMC

STIPULATED PROTECTIVE ORDER  
FOR STANDARD LITIGATION

Trial: Not Set

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from

1 public disclosure and from use for any purpose other than prosecuting this litigation  
2 may be warranted. Accordingly, the parties hereby stipulate to and petition the court  
3 to enter the following Stipulated Protective Order. The parties acknowledge that this  
4 Order does not confer blanket protections on all disclosures or responses to discovery  
5 and that the protection it affords from public disclosure and use extends only to the  
6 limited information or items that are entitled to confidential treatment under the  
7 applicable legal principles. The parties further acknowledge, as set forth in Section  
8 12.3, below, that this Stipulated Protective Order does not entitle them to file  
9 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
10 that must be followed and the standards that will be applied when a party seeks  
11 permission from the court to file material under seal.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
14 information or items under this Order.

15 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
16 how it is generated, stored or maintained) or tangible things that qualify for protection  
17 under Federal Rule of Civil Procedure 26(c).

18 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their  
19 support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or  
21 items that it produces in disclosures or in responses to discovery as  
22 “CONFIDENTIAL.”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of  
24 the medium or manner in which it is generated, stored, or maintained (including,  
25 among other things, testimony, transcripts, and tangible things), that are produced or  
26 generated in disclosures or responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter  
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1 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
2 expert witness or as a consultant in this action.

3       2.7 Non-Party: any natural person, partnership, corporation, association, or  
4 other legal entity not named as a Party to this action.

5       2.8 Outside Counsel of Record: attorneys who are not employees of a party  
6 to this action but are retained to represent or advise a party to this action and have  
7 appeared in this action on behalf of that party or are affiliated with a law firm which  
8 has appeared on behalf of that party.

9       2.9 Party: any party to this action, including all of its officers, directors,  
10 employees, consultants, retained experts, and Outside Counsel of Record (and their  
11 support staffs).

12       2.10 Producing Party: a Party or Non-Party that produces Disclosure or  
13 Discovery Material in this action.

14       2.11 Professional Vendors: persons or entities that provide litigation support  
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
16 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
17 and their employees and subcontractors.

18       2.12 Protected Material: any Disclosure or Discovery Material that is  
19 designated as “CONFIDENTIAL.”

20       2.13 Receiving Party: a Party that receives Disclosure or Discovery Material  
21 from a Producing Party.

### 22 3. SCOPE

23       The protections conferred by this Stipulation and Order cover not only  
24 Protected Material (as defined above), but also (1) any information copied or extracted  
25 from Protected Material; (2) all copies, excerpts, summaries, or compilations of  
26 Protected Material; and (3) any testimony, conversations, or presentations by Parties  
27 or their Counsel that might reveal Protected Material. However, the protections  
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1 conferred by this Stipulation and Order do not cover the following information:

2 (a) any information that is in the public domain at the time of disclosure to a  
3 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 4. DURATION

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

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

1 Mass, indiscriminate, or routinized designations are prohibited. Designations  
2 that are shown to be clearly unjustified or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber or retard the case development process or to  
4 impose unnecessary expenses and burdens on other parties) expose the Designating  
5 Party to sanctions. If it comes to a Designating Party's attention that information or  
6 items that it designated for protection do not qualify for protection, that Designating  
7 Party must promptly notify all other Parties that it is withdrawing the mistaken  
8 designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in  
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
12 under this Order must be clearly so designated before the material is disclosed or  
13 produced.

14 Designation in conformity with this Order requires:

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

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

6 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
7 that the Designating Party identify on the record, before the close of the deposition,  
8 hearing, or other proceeding, all protected testimony.

9 (c) for information produced in some form other than documentary and for  
10 any 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 or item is stored the  
12 legend “CONFIDENTIAL.” If only a portion or portions of the information or item  
13 warrant protection, the Producing Party, to the extent practicable, shall identify the  
14 protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
16 failure to designate qualified information or items does not, standing alone, waive the  
17 Designating Party’s right to secure protection under this Order for such material.  
18 Upon timely correction of a designation, the Receiving Party must make reasonable  
19 efforts to assure that the material is treated in accordance with the provisions of this  
20 Order.

## 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
23 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
24 Party’s confidentiality designation is necessary to avoid foreseeable, substantial  
25 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
26 litigation, a Party does not waive its right to challenge a confidentiality designation by  
27 electing not to mount a challenge promptly after the original designation is disclosed.

1           6.2    Meet and Confer. The Challenging Party shall initiate the dispute  
2 resolution process by providing written notice of each designation it is challenging  
3 and describing the basis for each challenge. To avoid ambiguity as to whether a  
4 challenge has been made, the written notice must recite that the challenge to  
5 confidentiality is being made in accordance with this specific paragraph of the  
6 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
7 must begin the process by conferring directly (in voice to voice dialogue; other forms  
8 of communication are not sufficient) within 14 days of the date of service of notice. In  
9 conferring, the Challenging Party must explain the basis for its belief that the  
10 confidentiality designation was not proper and must give the Designating Party an  
11 opportunity to review the designated material, to reconsider the circumstances, and, if  
12 no change in designation is offered, to explain the basis for the chosen designation. A  
13 Challenging Party may proceed to the next stage of the challenge process only if it has  
14 engaged in this meet and confer process first or establishes that the Designating Party  
15 is unwilling to participate in the meet and confer process in a timely manner.

16           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
17 court intervention, the Designating Party shall file and serve a motion to retain  
18 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-  
19 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of  
20 the parties agreeing that the meet and confer process will not resolve their dispute,  
21 whichever is earlier. Each such motion must be accompanied by a competent  
22 declaration affirming that the movant has complied with the meet and confer  
23 requirements imposed in the preceding paragraph. Failure by the Designating Party to  
24 make such a motion including the required declaration within 21 days (or 14 days, if  
25 applicable) shall automatically waive the confidentiality designation for each  
26 challenged designation. In addition, the Challenging Party may file a motion  
27 challenging a confidentiality designation at any time if there is good cause for doing  
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1 so, including a challenge to the designation of a deposition transcript or any portions  
2 thereof. Any motion brought pursuant to this provision must be accompanied by a  
3 competent declaration affirming that the movant has complied with the meet and  
4 confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the  
6 Designating Party. Frivolous challenges, and those made for an improper purpose  
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
8 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
9 the confidentiality designation by failing to file a motion to retain confidentiality as  
10 described above, all parties shall continue to afford the material in question the level  
11 of protection to which it is entitled under the Producing Party's designation until the  
12 court rules on the challenge.

## 13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
15 disclosed or produced by another Party or by a Non-Party in connection with this case  
16 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
17 Material may be disclosed only to the categories of persons and under the conditions  
18 described in this Order. When the litigation has been terminated, a Receiving Party  
19 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
24 otherwise ordered by the court or permitted in writing by the Designating Party, a  
25 Receiving Party may disclose any information or item designated "CONFIDENTIAL"  
26 only to:

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

4 (b) the officers, directors, and employees of the Receiving Party to whom  
5 disclosure is reasonably necessary for this litigation and who have signed the  
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants,  
12 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary  
13 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
14 Bound” (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is  
16 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
17 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
18 by the court. Pages of transcribed deposition testimony or exhibits to depositions that  
19 reveal Protected Material must be separately bound by the court reporter and may not  
20 be disclosed to anyone except as permitted under this Stipulated Protective Order.

21 (g) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or knew the information.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation  
26 that compels disclosure of any information or items designated in this action as  
27 “CONFIDENTIAL,” that Party must:

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

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

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

9 If the Designating Party timely seeks a protective order, the Party served with  
10 the subpoena or court order shall not produce any information designated in this  
11 action as “CONFIDENTIAL” before a determination by the court from which the  
12 subpoena or order issued, unless the Party has obtained the Designating Party’s  
13 permission. The Designating Party shall bear the burden and expense of seeking  
14 protection in that court of its confidential material – and nothing in these provisions  
15 should be construed as authorizing or encouraging a Receiving Party in this action to  
16 disobey a lawful directive from another court.

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

19 (a) The terms of this Order are applicable to information produced by a  
20 Non-Party in this action and designated as “CONFIDENTIAL.” Such information  
21 produced by Non-Parties in connection with this litigation is protected by the  
22 remedies and relief provided by this Order. Nothing in these provisions should be  
23 construed as prohibiting a Non-Party from seeking additional protections.

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

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

4 (2) promptly provide the Non-Party with a copy of the Stipulated  
5 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
6 specific description of the information requested; and

7 (3) make the information requested available for inspection by the Non-  
8 Party.

9 (c) If the Non-Party fails to object or seek a protective order from this court  
10 within 14 days of receiving the notice and accompanying information, the Receiving  
11 Party may produce the Non-Party's confidential information responsive to the  
12 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
13 Party shall not produce any information in its possession or control that is subject to  
14 the confidentiality agreement with the Non-Party before a determination by the court.  
15 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
16 of seeking protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

11   12.   MISCELLANEOUS

12           12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
13 person to seek its modification by the court in the future.

14           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
15 Protective Order no Party waives any right it otherwise would have to object to  
16 disclosing or producing any information or item on any ground not addressed in this  
17 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
18 ground to use in evidence of any of the material covered by this Protective Order.

19           12.3 Filing Protected Material. Without written permission from the  
20 Designating Party or a court order secured after appropriate notice to all interested  
21 persons, a Party may not file in the public record in this action any Protected Material.  
22 A Party that seeks to file under seal any Protected Material must comply with Civil  
23 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
24 order authorizing the sealing of the specific Protected Material at issue. Pursuant to  
25 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that  
26 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
27 entitled to protection under the law. If a Receiving Party's request to file Protected  
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1 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then  
2 the Receiving Party may file the information in the public record pursuant to Civil  
3 Local Rule 79-5(e) unless otherwise instructed by the court.

4 13. FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Date: December 8, 2016

NOSSAMAN LLP  
VERONICA M. GRAY  
ANDREW C. CRANE

By: /s/ Andrew C. Crane  
Andrew C. Crane

Attorneys for Plaintiffs and Counter-  
Defendants  
ICE Consulting, Inc.; Uzair Sattar;  
and Derick Needham

Date: December 8, 2016

DHILLON LAW GROUP INC

By: /s/ Nitoy P. Singh  
Nitoy P. Singh

Attorneys for Defendant and Counter-  
Claimant  
Gavin Jensen

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 12/12/16

Hon. Edward M. Chen  
District Judge



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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 Stipulated Protective Order that was issued by the United  
States District Court for the Northern District of California on [date] in the case of  
*ICE Consulting, Inc., et al v. Gavin Jensen*, Case No. 3:16-cv-04349-EMC. I agree to  
comply with and to be bound by all the terms of this Stipulated 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 Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this  
Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this  
Stipulated 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 Stipulated Protective  
Order.

Date: \_\_\_\_\_

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

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

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