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Attorneys for Defendant  
PIER 1 IMPORTS (U.S.), INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

KIMBERLY ERIN CASELMAN, on behalf  
of herself and all others similarly situated,

Plaintiff,

v.

PIER 1 IMPORTS (U.S.), INC., DOES ONE  
through TEN inclusive,

Defendants.

Case No. 5:14-cv-02383-LHK-PSG

~~STIPULATED~~ **PROTECTIVE ORDER**

1       1.       PURPOSE AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation is warranted.  
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
7 protections on all disclosures or responses to discovery and that the protection it affords extends  
8 only to the limited information or items that are entitled under applicable legal principles to  
9 treatment as confidential. The parties further acknowledge, as set forth in Section 12.3, below,  
10 that this Stipulated Protective Order creates no entitlement to file confidential information under  
11 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the  
12 standards that will be applied when a party seeks permission from the court to file material under  
13 seal.  
14

15       2.       DEFINITIONS

16           2.1       Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order, including all of its officers, directors, employees,  
18 consultants, retained experts, and outside counsel (and their support staff).

19           2.2       Disclosure or Discovery Material: all items or information, regardless of the  
20 medium or manner generated, stored, or maintained (including, among other things, testimony,  
21 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
22 discovery in this matter.

23           2.3       “CONFIDENTIAL” Information or Items: information (regardless of how  
24 generated, stored or maintained) or tangible things that qualify for protection under standards  
25 developed under Federal Rule of Civil Procedure 26(c).

26           2.4       Receiving Party: a Party that receives Disclosure or Discovery Material from a  
27 Producing Party.  
28

1           2.5    Producing Party: a Party that produces Disclosure or Discovery Material in this  
2 action.

3           2.6    Designating Party: a Party or Non-Party that designates information or items that  
4 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

5           2.7    Protected Material: any Disclosure or Discovery Material that is designated under  
6 this Stipulated Protective Order.

7           2.8    Outside Counsel: attorneys who are not employees of a Party but who are retained  
8 to represent or advise a Party in this action.

9           2.9    Expert: a person with specialized knowledge or experience in a matter pertinent to  
10 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
11 consultant in this action.

12           2.10   Counsel (without qualifier): Outside Counsel, In-House Counsel (as well as their  
13 support staffs) and Plaintiff’s Counsel.

14           2.11   In-House Counsel: attorneys who are employees of a party to this action. In-  
15 House Counsel does not include Outside Counsel or any other outside counsel.

16           2.12   Plaintiff’s Counsel: counsel for plaintiff Erin Caselman, the putative class, and  
17 any present or future class member or class representative.

18           2.13   Non-Party: any natural person, partnership, corporation, association, or other  
19 legal entity not named as a Party to this action.

20           2.14   Party: any party to this action, including all of its officers, directors, employees,  
21 consultants, retained experts, and Counsel (and their support staffs).

22           2.15   Professional Vendors: persons or entities that provide litigation support services  
23 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
24 storing, or retrieving data in any form or medium) and their employees and subcontractors.  
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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material  
3 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
4 excerpts, summaries, or compilations thereof, plus any testimony, conversations, or presentations  
5 by Parties or Counsel to or in court or in other settings that might reveal Protected Material.  
6 However, the protections conferred by this Stipulation and Order do not cover the following  
7 information: (a) any information that is in the public domain at the time of disclosure to a  
8 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
9 a result of publication not involving a violation of this Order, including becoming part of the  
10 public record through trial or otherwise; and (b) any information known to the Receiving Party  
11 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
12 obtained the information lawfully and under no obligation of confidentiality to the Designating  
13 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

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

22 23 24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
26 or Non-Party that designates information or items for protection under this Order must take care  
27 to limit any such designation to specific material that qualifies under the appropriate standards. A  
28 Designating Party must take care to designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify — so that other portions of the  
2 material, documents, items, or communications for which protection is not warranted are not  
3 swept unjustifiably within the ambit of this Order.

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

8 If it comes to a Party's attention that information or items that it designated for protection do not  
9 qualify for protection at all, or do not qualify for the level of protection initially asserted, that  
10 Party must promptly notify all other Parties that it is withdrawing the mistaken designation.  
11

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

16 Designation in conformity with this Order requires:

17 (a) For information in documentary form (e.g., paper or electronic documents, but  
18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
19 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a  
20 portion or portions of the material on a page qualifies for protection, the Producing Party also  
21 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
22 margins).  
23

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

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

7 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the  
8 Designating Party identify on the record, before the close of the deposition, hearing, or other  
9 proceeding, all protected testimony. When it is impractical to identify separately each portion of  
10 testimony that is entitled to protection, and when it appears that substantial portions of the  
11 testimony may qualify for protection, a Party may invoke on the record (before the deposition or  
12 proceeding is concluded) a right to have up to 20 days from receipt of the transcript to identify  
13 the specific portions of the testimony as to which protection is sought. Only those portions of the  
14 testimony that are appropriately designated for protection within the 20 days shall be covered by  
15 the provisions of this Stipulated Protective Order.  
16

17 Transcript pages containing Protected Material must be separately bound by the court  
18 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL.”

19 (c) for information produced in some form other than documentary and for any other  
20 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
21 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only  
22 portions of the information or item warrant protection, the Producing Party, to the extent  
23 practicable, shall identify the protected portions.  
24

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
26 designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive  
27 the Designating Party’s right to secure protection under this Order for such material. If material is  
28 appropriately designated as “CONFIDENTIAL” after the material was initially produced, the

1 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
2 that the material is treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right  
8 to challenge a confidentiality designation by electing not to mount a challenge promptly after the  
9 original designation is disclosed.

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

22 6.3 Judicial Intervention. A Party that elects to press a challenge to a  
23 confidentiality designation after considering the justification offered by the Designating Party  
24 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
25 79-5, if applicable) within 21 days of the initial notice of challenge under 6.2 or within 14 days of  
26 the parties agreeing that the meet and confer process will not resolve their dispute, whichever is  
27  
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1 earlier, and setting forth in detail the basis for the challenge. Each such motion must be  
2 accompanied by a competent declaration affirming that the movant has complied with the meet  
3 and confer requirements imposed in the preceding paragraph and that sets forth with specificity  
4 the justification for the confidentiality designation that was given by the Designating Party in the  
5 meet and confer dialogue. Failure by the Designating Party to make such a motion including the  
6 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the  
7 confidentiality designation for each challenged designation. In addition, the Challenging Party  
8 may file a motion challenging a confidentiality designation at any time if there is good cause for  
9 doing so, including a challenge to the designation of a deposition transcript or any portions  
10 thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
11 declaration affirming that the movant has complied with the meet and confer requirements  
12 imposed by the preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating  
15 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
16 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
17 sanctions. Until the Court rules on the challenge or the Designating Party waives the  
18 confidentiality designation by failing to file a motion to retain confidentiality as described above,  
19 all parties shall continue to afford the material in question the level of protection to which it is  
20 entitled under the Producing Party's designation until the court rules on the challenge.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
23 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
25 to the categories of persons and under the conditions described in this Order. When the litigation  
26 has been terminated, a Receiving Party must comply with the provisions of section 13 below  
27 (FINAL DISPOSITION).  
28



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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
5 disclose any information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
7 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
8 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached  
9 hereto as Exhibit A;

10 (b) the officers, directors, and employees (including In-House Counsel) of the  
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
12 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

13 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
14 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by  
15 Protective Order” (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters, their staff, and professional jury or trial consultants, mock jurors,  
18 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
19 have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
21 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

22 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
23 Material must be separately bound by the court reporter and may not be disclosed to anyone  
24 except as permitted under this Stipulated Protective Order.

25 (g) the author or recipient of the document or the original source of the information or  
26 a custodian or other person who otherwise possessed or knew the information.  
27  
28

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 LITIGATION

3 If a Receiving Party is served with a subpoena or a court order issued in other litigation  
4 compelling disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL” the Receiving Party must:

6 (a) so notify the Designating Party, in writing (by fax, if possible) immediately and in  
7 no event more than three court days after receiving the subpoena or order. Such notification must  
8 include a copy of the subpoena or court order;

9 (b) the Receiving Party must also immediately inform in writing the Party who caused  
10 the subpoena or order to issue in the other litigation that some or all of the material covered by  
11 the subpoena or order is the subject of this Protective Order. Such notification shall include a  
12 copy of this Protective Order;

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

15 If the Designating Party timely seeks a protective order, the Party served with the  
16 subpoena or court order shall not produce any information designated in this action as  
17 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
18 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
19 shall bear the burden and expense of seeking protection in that court of its confidential material –  
20 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
21 Party in this action to disobey a lawful directive from another court.  
22

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

25 (a) The terms of this Order are applicable to information produced by a Non-Party in  
26 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
27 connection with this litigation is protected by the remedies and relief provided by this Order.  
28

1 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
2 additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
4 Party's confidential information in its possession, and the Party is subject to an agreement with  
5 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

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

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

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

12 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
13 days of receiving the notice and accompanying information, the Receiving Party may produce the  
14 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
15 seeks a protective order, the Receiving Party shall not produce any information in its possession  
16 or control that is subject to the confidentiality agreement with the Non-Party before a  
17 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
18 burden and expense of seeking protection in this court of its Protected Material.  
19

20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
22 Material to any person or in any circumstance not authorized under this Stipulated Protective  
23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
24 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
25 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
26 made of all the terms of this Order, and (d) request such person or persons to execute the  
27 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.  
28

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

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

12 12. MISCELLANEOUS

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

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

20 12.3 Filing Protected Material.

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

5 13. FINAL DISPOSITION

6 Unless otherwise ordered or agreed in writing by the producing party, within sixty (60)  
7 days after the final disposition of this action, as defined in paragraph 4, each receiving party must  
8 return all protected material to the producing party. As used in this subdivision, "all protected  
9 material" includes all copies, abstracts, compilations, summaries, or any other form of  
10 reproducing or capturing any of the protected material, with permission in writing from the  
11 designating party, the receiving party may destroy some or all of the protected material instead of  
12 returning it. Whether the protected material is returned or destroyed, the receiving party must  
13 submit a written certification to the producing party (and, if not the same person or entity, to the  
14 designating party) by the sixty (60) day deadline that identifies (by category, where appropriate)  
15 all the protected material that was returned or destroyed and that affirms the receiving party has  
16 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or  
17 capturing any of the protected material. Notwithstanding this provision, counsel are entitled to  
18 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
19 correspondence, work product, even if such materials contain protected material. Any such  
20 archival copies that contain or constitute protected material remain subject to this protective  
21 order as set forth in section 4 (DURATION), above.  
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Respectfully submitted,

DATED: October 27, 2014	THE LEGAL AID SOCIETY, EMPLOYMENT LAW CENTER  By <u> /s/ Elizabeth Kristen</u> Elizabeth Kristen Sharon Terman Giselle Olmedo  Attorneys for Plaintiff and the Class
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DATED: October 27, 2014	SEYFARTH SHAW LLP  By <u> /s/ Julie G. Yap</u> Michael J. Burns Laura J. Maechtlen Julie G. Yap  Attorneys for Defendant PIER 1 IMPORTS (U.S.), INC.
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1 EXHIBIT A

2 AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or  
4 type full address], declare under penalty of perjury that I have read in its entirety and understand  
5 the Stipulated Protective Order that was issued by the United States District Court for the  
6 Northern District of California on \_\_\_\_\_ in the case of **KIMBERLY ERIN**  
7 **CASELMAN V. PIER 1 IMPORTS (U.S.), INC., Case No. 5:14-cv-02383-LHK**. I agree to  
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.  
13

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full address and telephone  
19 number] as my California agent for service of process in connection with this action or any  
20 proceedings related to enforcement of this Stipulated Protective Order.  
21

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

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

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

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27 Signature: \_\_\_\_\_  
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ORDER

The court, having reviewed the above stipulated protective order, and good cause appearing, enters this protective order as an order of the court.

IT IS SO ORDERED.

Dated: October 28, 2014

  
Paul S. Grewal  
U.S. Magistrate Judge