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DANIELLE OCHS, State Bar No. 178677
dot@ogletreedeakins.com
BECKI D. GRAHAM, State Bar No. 238010
becki.graham@ogletreedeakins.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Steuart Tower, Suite 1300
One Market Plaza
San Francisco, CA 94105
Telephone: 415.442.4810
Facsimile: 415.442.4870

Attorneys for Defendant
LOCKHEED MARTIN CORPORATION (erroneously sued as
"LOCKHEED MARTIN SPACE SYSTEMS")

KATHERINE ZARATE DULANY
katherine@zaratedulanylaw.com
ZARATE DULANY LAW, P.C.
P.O. Box 20
Daly City, CA 94016
Telephone: (415) 801-8063
Facsimile: (415) 202-6596

Attorney for Plaintiff
John DiMaggio

WILLIAM J. DELANY, *Admitted Pro Hac Vice*
bill@delany-law.com
CYNTHIA M. ROTE
cynthia@delany-law.com
DELANEY LAW, P.C.
444 N. Wabash Avenue, Suite 300
Chicago, IL 60611
Telephone: (312) 276-0263
Facsimile: (312) 873-4465

Attorneys for Plaintiff
John DiMaggio

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOHN DIMAGGIO, an individual,

Plaintiff,

v.

LOCKHEED MARTIN SPACE SYSTEMS, a
subsidiary of LOCKHEED MARTIN
CORPORATION, a Maryland corporation,

Defendant.

Case No. 5:15-cv-02276-~~HRL~~^{EJD} (HRL)
**STIPULATED PROTECTIVE ORDER FOR
STANDARD LITIGATION**

Complaint Filed: May 5, 2015
Trial Date: Not Set

(RE: DKT. 38)

MODIFIED BY THE COURT

FILED

MAR 15 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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

13 **DEFINITIONS**

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

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

19 **2.3 Counsel (without qualifier):** Outside Counsel of Record and House Counsel (as well
20 as their support staff).

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

23 **2.5 Disclosure or Discovery Material:** all items or information, regardless of the medium
24 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
25 transcripts, and tangible things), that are produced or generated in disclosures or responses to
26 discovery in this matter.
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- 1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action.
- 4 2.7 House Counsel: attorneys who are employees of a party to this action. House
5 Counsel does not include Outside Counsel of Record or any other outside counsel.
- 6 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
7 entity not named as a Party to this action.
- 8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
9 action but are retained to represent or advise a party to this action and have appeared
10 in this action on behalf of that party or are affiliated with a law firm which has
11 appeared on behalf of that party.
- 12 2.10 Party: any party to this action, including all of its officers, directors, employees,
13 consultants, retained experts, and Outside Counsel of Record (and their support
14 staffs).
- 15 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
16 Material in this action.
- 17 2.12 Professional Vendors: persons or entities that provide litigation support services
18 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
19 and organizing, storing, or retrieving data in any form or medium) and their
20 employees and subcontractors.
- 21 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL.”
- 23 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material (as
27 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
28 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the following
3 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
4 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
5 publication not involving a violation of this Order, including becoming part of the public record
6 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
7 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
8 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
9 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 imposed by this
12 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
13 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
14 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
15 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
16 limits for filing any motions or applications for extension of time pursuant to applicable law.

17 5. DESIGNATING PROTECTED MATERIAL **FOR A PERIOD OF SIX MONTHS AFTER FINAL DISPOSITION OF THIS LITIGATION, THIS COURT WILL RETAIN JURISDICTION TO ENFORCE THE TERMS OF THIS ORDER.**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
19 or Non-Party that designates information or items for protection under this Order must take care to
20 limit any such designation to specific material that qualifies under the appropriate standards. The
21 Designating Party must designate for protection only those parts of material, documents, items, or
22 oral or written communications that qualify – so that other portions of the material, documents,
23 items, or communications for which protection is not warranted are not swept unjustifiably within
24 the ambit of this Order.

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

1 If it comes to a Designating Party's attention that information or items that it designated for
2 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
3 that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

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

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

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
26 Designating Party identify on the record, before the close of the deposition, hearing, or other
27 proceeding, all protected testimony.
28

1 (c) for information produced in some form other than documentary and for any other
2 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
3 or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a
4 portion or portions of the information or item warrant protection, the Producing Party, to the extent
5 practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
7 designate qualified information or items does not, standing alone, waive the Designating Party's
8 right to secure protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
10 in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
13 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
15 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

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

1 has engaged in this meet and confer process first or establishes that the Designating Party is
2 unwilling to participate in the meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, ~~the Designating Party shall file and serve a motion to retain confidentiality under Civil~~
~~Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the~~
5 ~~initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process~~
6 ~~will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a~~
7 ~~(DDJR), THE PARTIES SHALL ATTEST THAT THEY HAVE~~
8 ~~competent declaration affirming that the movant has complied with the meet and confer requirements~~
9 ~~imposed in the preceding paragraph. Failure by the Designating Party to make such a motion~~
10 ~~including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive~~
11 ~~the confidentiality designation for each challenged designation. In addition, the Challenging Party~~
12 ~~may file a motion challenging a confidentiality designation at any time if there is good cause for~~
13 ~~doing so, including a challenge to the designation of a deposition transcript or any portions thereof.~~
14 ~~Any motion brought pursuant to this provision must be accompanied by a competent declaration~~
15 ~~affirming that the movant has complied with the meet and confer requirements imposed by the~~
16 ~~preceding paragraph.~~

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

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
26 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
27 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
28 the categories of persons and under the conditions described in this Order. When the litigation has

1 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
2 DISPOSITION).

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

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

8 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
10 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
11 Bound" that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House Counsel) of the
13 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
14 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
16 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
17 to Be Bound" (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
20 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
21 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

28

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

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
7 must:

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

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

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 subpoena
16 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
17 before a determination by the ~~court from which the subpoena or order issued~~ ^{APPROPRIATE COURT}, unless the Party has
18 obtained the Designating Party's permission. The Designating Party shall bear the burden and
19 expense of seeking protection in that court of its confidential material – and nothing in these
20 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
21 disobey a lawful directive from another court.

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

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-
26 Parties in connection with this litigation is protected by the remedies and relief provided by this
27 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
28 additional protections.

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

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

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

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

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

17 burden and expense of seeking protection in this court of its Protected Material. **ALL SUCH DISCLOSURES
18 AND DISCOVERY DISPUTES ARE SUBJECT TO THE UNDERSIGNED'S STANDING ORDER RE
19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL CIVIL DISCOVERY DISPUTES.**

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

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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 provision
6 is not intended to modify whatever procedure may be established in an e-discovery order that
7 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
8 502(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 protection,
10 the parties may incorporate their agreement in the stipulated protective order submitted to the
11 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 Protective Order
16 no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
18 Party waives any right to object on any ground to use in evidence of any of the material covered by
19 this Protective Order.

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

1 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
2 by the court.

3 13. FINAL DISPOSITION

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

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20
21 DATED: 2/10/16 _____ Jackie J. Garte Dubay
22 ATTORNEYS FOR PLAINTIFF JOHN
23 DIMAGGIO

24 DATED: 2/10/16 _____ [Signature]
25 ATTORNEYS FOR DEFENDANT LOCKHEED
26 MARTIN CORPORATION

27 AS MODIFIED BY THE COURT,
28 PURSUANT TO STIPULATION, IT IS SO ORDERED.

29 DATED: 3/14/16 _____ [Signature]
30 United States District Magistrate Judge
31 HOWARD R. LLOYD

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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 _____ [insert formal name of the case and the number and initials assigned to it by the court]. 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: _____