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19 *Buildings Systems, LLC d/b/a ClarkDietrich*

20 **UNITED STATES DISTRICT COURT**

21 **DISTRICT OF NEVADA**

22 CLARKWESTERN DIETRICH BUILDING
23 SYSTEMS LLC d/b/a CLARKDIETRICH, an
Ohio limited liability company,

24 Plaintiff,

25 vs.

26
27 ALLSTEEL & GYPSUM PRODUCTS, INC.,
a Florida corporation; CONSOLIDATED
28 FABRICATORS CORP., a California

Case No.: 2:14-cv-01319-RFB-GWF

~~[PROPOSED]~~ PROTECTIVE ORDER
FOR CONFIDENTIAL INFORMATION

1 corporation; CRACO MANUFACTURING,
2 INC., a South Carolina corporation;
3 CUSTOM STUD, INC., a Minnesota
4 corporation, DESIGN SHAPES IN STEEL,
5 INC., a California corporation, FRAMETEK
6 STEEL PRODUCTS, INC., a California
7 corporation; and UNITED METAL
8 PRODUCTS, INC.; a California corporation,
9
10 Defendants.

7 WHEREAS ClarkWestern Dietrich Building Systems LLC (d/b/a ClarkDietrich)
8 (“Plaintiff”) and AllSteel & Gypsum Products, Inc., Consolidated Fabricators Corp., Craco
9 Manufacturing, Inc., CUSTOM STUD, Inc, Design Shapes in Steel, Inc., FrameTek Steel
10 Products, Inc. and United Metal Products, Inc. (hereinafter “Defendants”) (each a “Party” and
11 together the “Parties”) recognize that certain information related to the subject matter of this
12 action is sensitive and confidential, the Parties stipulate and agree as follows:

13 1. **Applicability of this Protective Order:** This Proposed Protective Order for
14 Confidential Information (the “Protective Order”) does not and will not govern any trial
15 proceedings in this action but will otherwise be applicable to and govern the handling of
16 documents, depositions, deposition exhibits, interrogatory responses, responses to requests for
17 admissions, responses to requests for production of documents, and all other discovery obtained
18 pursuant to the Federal Rules of Civil Procedure or other legal process by or from, or produced
19 on behalf of, a party in connection with this action (this information hereinafter referred to as
20 “Discovery Material”). As used herein, “Producing Party” or “Disclosing Party” shall refer to
21 the parties that give testimony in this action or produce documents or other information to parties
22 and to non-parties; “Receiving Party” shall refer to the parties in this action that receive such
23 information, and “Authorized Recipient” shall refer to any person or entity authorized by
24 Sections 3 and 4 of this Protective Order to obtain access to Confidential Information or the
25 contents of such Discovery Material.

26 2. **Designation of Information:** Any Producing Party may designate Discovery
27 Material that is in its possession, custody, or control to be produced to a Receiving Party as
28 “Confidential” or “For Authorized Counsel Only” under the terms of this Protective Order if the

1 Producing Party in good faith reasonably believes that such Discovery Material contains non-
2 public, confidential information as defined as follows:

3 a. For purposes of this Protective Order, “Confidential Information” means
4 any data or information that constitutes, reflects, or discloses non-public, trade secrets, know-
5 how, proprietary data, marketing information, financial information, and/or commercially
6 sensitive business information or data which the Producing Party in good faith believes is
7 confidential or the unprotected disclosure of which might result in economic or competitive
8 injury, and which is not publicly known and cannot be ascertained from an inspection of publicly
9 available documents, materials, or devices. Confidential Information shall also include sensitive
10 personal information that is not otherwise publicly available, such as home addresses; Social
11 Security numbers; dates of birth; employment personnel files; medical information; home
12 telephone records/numbers; employee disciplinary records; wage statements or earnings
13 statements; employee benefits data; tax records; and other similar personal financial information.
14 A Producing Party may also designate as “Confidential” compilations of publicly available
15 discovery materials, which would not be known publicly in a compiled form.

16 b. For purposes of this Protective Order, “For Authorized Counsel Only”
17 means any Confidential Information as defined in Section 2(a) above that also includes
18 extremely sensitive, highly confidential, non-public information, including but not limited to,
19 certain business information, business dealings, dealings with customers/prospective customers,
20 customer sales analyses, invoices, research and development, product development-related ideas,
21 concepts, unpublished intellectual property applications, and information, financial, accounting,
22 and inventory information, which further includes pricing information, forecasts, budgets,
23 business plans, process descriptions, customer lists, marketing plans and analyses, whether
24 implemented or not, and other related and/or similar information, the disclosure of which could
25 create a substantial risk of competitive or business injury to the Producing Party. A Producing
26 Party may re-designate material originally “Confidential” as “For Authorized Counsel Only” by
27 giving written notice of such a re-designation to all parties.
28

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1 3. **Persons Authorized to Receive Confidential Information.** The following
2 persons may have access to materials designated as “Confidential”:

3 a. A party, or officers, directors, and employees of a party deemed necessary
4 by counsel to aid in the prosecution, defense, or settlement of this action;

5 b. Counsel for a party (including in-house attorneys, outside attorneys, and
6 legal assistants, clerical personnel, and paralegals employed by such counsel);

7 c. Court personnel, stenographic reporters, litigation support vendors
8 engaged in activities incidental to discovery or preparation for trial, and mock jurors;

9 d. Consulting or testifying experts retained by counsel for a party in
10 connection with this proceeding (the “Retaining Party”), provided that any such expert (1) is not
11 employed by or a consultant to a competitor of the party whose Confidential Information is to be
12 disclosed (the “Other Party”); (2) is not employed by or a consultant to a supplier, customer, or
13 entity otherwise related to either the Retaining Party or Other Party; and (3) does not have a
14 continuing business relationship with either the Retaining Party or Other Party or its related
15 entities beyond litigation support in this case;

16 e. A testifying witness at any deposition or other proceeding this action; and

17 f. Any other person as to whom the parties in writing agree or that the Court
18 in these proceedings designates.

19 4. **Persons Authorized to Receive Attorney’s Eyes Only Information.** The
20 following persons may have access to materials designated as “For Authorized Counsel Only”:

21 a. Outside counsel for a party (including legal assistants, clerical personnel,
22 and paralegals employed by such outside counsel);

23 b. Court personnel, stenographic reporters, litigation support vendors
24 engaged in activities incidental to discovery or preparation for trial (*e.g.*, Court-appointed ESI
25 vendors), and mock jurors;

26 c. Consulting or testifying experts retained by counsel for a party in
27 connection with this proceeding (the “Retaining Party”), provided that any such expert (1) is not
28 employed by or a consultant to a competitor of the party whose Highly Confidential Information

1 is to be disclosed (the “Other Party”); (2) is not employed by or a consultant to a supplier,
2 customer or entity otherwise related to either the Retaining Party or Other Party; and (3) does not
3 have a continuing business relationship with either the Retaining Party or Other Party or its
4 related entities beyond litigation support in this case;

5 d. The author or recipient of a materials designated “For Authorized Counsel
6 Only” testifying at any deposition or other proceeding this action or any other witness who
7 questioning counsel reasonably believes authored or received such materials; and

8 e. Any other person as to whom the parties in writing agree or that the Court
9 in these proceedings designates.

10 5. Any copies, summaries, abstracts, or exact duplications of Confidential
11 Information or Highly Confidential – For Authorized Counsel Only Information shall be marked
12 “Confidential” or “For Authorized Counsel Only” and shall be considered Confidential
13 Information or Highly Confidential Information subject to the terms and conditions of this
14 Protective Order. Attorney-client communications and attorney work product regarding
15 Confidential Information or Highly Confidential Information shall not be subject to this Section,
16 regardless of whether they summarize, abstract, paraphrase, or otherwise reflect Confidential
17 Information or Highly Confidential Information.

18 6. Before disclosing Confidential Information or Highly Confidential Information to
19 any consulting or testifying expert, counsel for the Retaining Party shall provide such expert a
20 copy of this Order, which he or she shall read and upon reading shall complete and sign the
21 Acknowledgement attached as Exhibit A.

22 7. Upon receipt of the information described in Section 6, the Other Party shall have
23 seven (7) calendar days to serve a written objection to the proposed disclosure of its Confidential
24 or Highly Confidential Information, which shall state with specificity the reasons for such
25 objection. If counsel for the Other Party objects within seven (7) calendar days, there shall be no
26 disclosure to such expert except by further order of the Court pursuant to a motion brought by
27 the Retaining Party within ten (10) calendar days of the service of the objection. On any motion
28 brought pursuant to this Section, the Other Party shall bear the burden of showing why disclosure

1 to that expert should be precluded. Failure to timely oppose the motion operates as a waiver of
2 the Other Party's right to object to disclosure of Confidential or Highly Confidential Information
3 to such expert; likewise, failure to timely file a motion operates as a waiver of the Retaining
4 Party's right to challenge the objection.

5 8. Confidential and Highly Confidential Information shall be used only for the
6 purpose of conducting discovery, preparing for pre-trial proceedings, and trial of this action.
7 Nothing in this Protective Order shall preclude the use in this action of any documents produced
8 in the action captioned ClarkWestern Dietrich Building Systems, LLC v. Ware Industries, Inc., et
9 al., pending in Butler County, Ohio, Case No. CV 2013 10 2809 (and the action consolidated
10 therewith, Case No. CV 2013 10 3027).

11 9. Confidential and Highly Confidential Information or the substance or context
12 thereof, including any notes, memoranda or other similar documents relating thereto, shall not be
13 disclosed to anyone other than a person permitted to have access under the terms of this
14 Stipulated Protective Order.

15 10. The inadvertent failure to designate information produced in discovery as
16 Confidential or Highly Confidential shall not be deemed, by itself, to be a waiver of the right to
17 so designate such discovery materials as Confidential or Highly Confidential Information.
18 Within a reasonable time of learning of any such inadvertent failure, the Producing Party shall
19 notify all Receiving Parties of such inadvertent failure and take such other steps as necessary to
20 correct such failure after becoming aware of it. Disclosure of such Discovery Materials to any
21 other person prior to later designation of the discovery materials in accordance with this Section
22 shall not violate the terms of this Protective Order. However, immediately upon being notified
23 of an inadvertent failure to designate, all parties shall treat such information as though properly
24 designated and take any actions reasonably necessary to prevent any unauthorized disclosure
25 subject to the provisions of this Protective Order.

26 11. Any of the parties to this action can challenge the designation of materials as
27 "Confidential" or "For Authorized Counsel Only" under this Protective Order. The signing of
28 this Protective Order or failure of a party, at the time it receives Confidential Information or

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1 Highly Confidential Information, to challenge or object to the “Confidential” or “For Authorized
2 Counsel Only” designation shall not be deemed a waiver of its right to challenge or object to the
3 “Confidential” or “For Authorized Counsel Only” designation at any later time. In the event that
4 any party desires to challenge at any time the designation of “Confidential” or “For Authorized
5 Counsel Only” materials, the challenging party shall, pursuant to Local Rule 26-7, first consult
6 with the party that made the challenged designation. If the parties cannot reach agreement as to
7 the appropriate designation for such materials, then the challenging party may move the Court
8 within ten (10) calendar days of the Rule 26-7(b) conference to lift the designation, with the
9 Producing Party bearing the burden of proof to justify the designation was appropriate. Failure
10 to make said motion within ten (10) calendar days of the Rule 26-7(b) conference shall result in
11 the materials being deemed appropriately designated. Any contested information shall continue
12 to be treated as confidential or highly confidential and subject to this Protective Order until such
13 time as such motion has been ruled upon.

14 12. Confidential Information and Highly Confidential Information shall not include
15 any materials which:

16 a. Have been or become part of the public domain by publication or
17 otherwise and not due to any unauthorized act or omission on the part of the Receiving Party;

18 b. Are not under law entitled to be treated as confidential;

19 c. Are made available to a party by a third-party who obtained the same by
20 legal means and without any obligation of confidence to the party claiming their confidential
21 nature;

22 d. Were lawfully in the Receiving Party’s possession prior to such
23 information being designated as Confidential or Highly Confidential in this action and that the
24 Receiving Party is not otherwise obligated to treat as confidential; or

25 e. Were independently developed after the time of disclosure by personnel
26 who did not have access to the Producing Party’s Confidential or Highly Confidential
27 Information.
28

1 Notwithstanding the foregoing, compilations and/or summaries of materials may
2 nonetheless be deemed and designated, in good faith, as “Confidential” or “For Authorized
3 Counsel Only” and are subject to this Protective Order even though some of the materials
4 contained in such compilations and/or summaries may have been produced to non-parties on a
5 non-confidential basis.

6 13. With the exception of court personnel, including judges, magistrates, court clerks,
7 mediators, and court reporters, any person, prior to receiving any Confidential or Highly
8 Confidential Information, shall be provided with a copy of this Protective Order and shall
9 acknowledge in writing, in the Acknowledgement attached hereto as Exhibit A, that he or she
10 has read this Protective Order, understands it, and agrees to be bound by it.

11 14. Execution of an Acknowledgment by any person is an express agreement to be
12 subject to the jurisdiction of this Court in connection with any proceeding or hearing relating to
13 such Confidential or Highly Confidential Information or to this Protective Order, including any
14 proceeding relating to the enforcement of this Protective Order.

15 15. Any person in possession of Confidential or Highly Confidential Information
16 must exercise reasonable and appropriate care with regard to the storage, custody and use of such
17 Confidential or Highly Confidential Information in order to ensure that the confidential nature of
18 the same is maintained.

19 16. Any party or non-party may designate depositions and other testimony (including
20 exhibits) as “For Authorized Counsel Only” by indicating on the record at the time the testimony
21 is given, or within seven (7) calendar days of receiving the final transcript that the entire
22 testimony or portions thereof shall be designated as “For Authorized Counsel Only.” Any party
23 or non-party may designate depositions and other testimony (including exhibits) as
24 “Confidential” by indicating on the record at the time the testimony is given, or within fourteen
25 (14) calendar days of receiving the final transcript that the entire testimony or portions thereof
26 shall be designated as “Confidential.” If no confidentiality designations are made within the
27 fourteen (14) calendar day period, the entire transcript shall be considered non-confidential.
28 During the fourteen (14) calendar day period, the entire transcript and video shall be treated as

1 “For Authorized Counsel Only” for the first seven (7) days and shall be treated as “Confidential”
2 for the next seven (7) days. All originals and copies of deposition transcripts that contain
3 Confidential or Highly Confidential Information shall be prominently marked “Confidential” or
4 “For Authorized Counsel Only” on the cover thereof and, if and when filed with the Court, the
5 portions of such transcript so designated shall be filed with a concurrent request that the Court
6 file the designated portions of the transcript under seal. Any DVD or other digital storage
7 medium containing Confidential or Highly Confidential deposition testimony shall be labeled in
8 accordance with the provisions of Sections 2(a) and 2(b).

9 17. Any Producing Party may designate documents it produces in the case as
10 “Confidential” or “For Authorized Counsel Only” by prominently marking the documents as
11 “Confidential” or “For Authorized Counsel Only”. If and when originals and copies of
12 documents marked “Confidential” or “For Authorized Counsel Only” are filed with the Court,
13 they should be filed with a concurrent request that they be filed under seal.

14 18. Any party may designate the entirety of, or any portion of, its discovery responses
15 as “Confidential” or “For Authorized Counsel Only” by prominently marking the responses with
16 “Confidential” or “For Authorized Counsel Only”. If and when originals or copies of any
17 discovery responses marked “Confidential” or “For Authorized Counsel Only” are filed with the
18 Court, they should be filed with a concurrent request that they be filed under seal.

19 19. If any Confidential or Highly Confidential Information is used in any pretrial
20 Court proceeding in this action, it shall not lose its confidential status through such use, and the
21 party using such information shall take all reasonable steps to maintain its confidentiality during
22 such use.

23 20. In accordance with Federal Rule of Evidence 502(d), the parties stipulate and
24 agree, and the Court hereby orders, that the disclosure (including production) of information that
25 a party or non-party later claims should not have been disclosed because of a privilege,
26 including, but not limited to, the attorney-client privilege or work product doctrine (“Privileged
27 Information”), shall not constitute a waiver of, or estoppel as to, any claim of attorney-client
28 privilege, attorney work product, or other ground for withholding production as to which the

1 Disclosing Party would be entitled in the litigation or any other federal or state proceeding. This
2 Protective Order is intended to provide the full protection afforded by Federal Rule of Evidence
3 502(d), providing that a “federal court may order that the privilege or protection is not waived by
4 disclosure connected with the litigation pending before the court—in which event the disclosure
5 is also not a waiver in any other federal or state proceeding.” In addition, the fact that a
6 document or other material was disclosed shall not be used in any manner as evidence in support
7 of any such alleged waiver. Upon a request from a party that has disclosed any document or
8 other material which it believes may be subject to the attorney-client privilege or work product
9 doctrine, or upon discovery by the Receiving Party that such document covered by the attorney-
10 client privilege and/or work product doctrine may have been produced, the Receiving Party of
11 said document or material shall return it and all copies within seven (7) calendar days to the
12 Producing Party. After the return of the document(s) or material(s), the Receiving Party may
13 challenge the disclosing party’s claim of attorney-client privilege and/or work product doctrine
14 by making a motion to the Court. In accordance with Federal Rule of Evidence 502(e), the
15 Parties’ foregoing stipulation and agreement on the effect of disclosure of Privileged Information
16 is binding on the Parties regardless of whether or not the Court enters this Stipulated Protective
17 Order for Confidential Information.

18 21. Nothing in this Protective Order shall bar or otherwise restrict any counsel
19 (including a party’s in-house counsel) from rendering advice to his or her client with respect to
20 this litigation and, in the course thereof, referring to or relying generally upon his or her
21 examination of materials designated “Confidential” or, except in the case of in-house counsel,
22 “For Authorized Counsel Only,” provided, however, that in rendering such advice and in
23 otherwise communicating with his or her client, the counsel shall not disclose the content or the
24 source of any Confidential or Highly Confidential Information contrary to the terms of this
25 Protective Order.

26 22. The provisions of this Protective Order shall also apply to materials and
27 deposition testimony produced by non-parties in discovery in this action, and non-parties may
28

1 designate their materials and deposition testimony as confidential in accordance with the
2 provisions of this Protective Order.

3 23. Any party issuing a subpoena to a non-party shall enclose a copy of this
4 Protective Order with a request that, within ten (10) calendar days, the non-party either request
5 the protection of this Protective Order or notify the issuing party that the non-party does not need
6 the protection of this Protective Order or wishes to seek different protection. Any non-party
7 invoking the Protective Order shall comply with, and be subject to, all other applicable Sections
8 of this Protective Order.

9 24. Each party acknowledges that monetary remedies may be inadequate to protect
10 each party in the case of unauthorized disclosure or use of Confidential or Highly Confidential
11 Information that the Receiving Party only received through discovery in this action and that
12 injunctive relief may be appropriate to protect each party's rights in the event there is any such
13 unauthorized disclosure or use of Confidential or Highly Confidential Information.

14 25. The Parties each reserve (1) the right to seek or oppose additional or different
15 protection for particular information, documents, materials, items or things, including but not
16 limited to, the right to seek a modification of this Protective Order; and (2) the right to object to
17 the production, disclosure and/or use of any information, documents, materials, items and/or
18 things that a Producing Party designates or marks as containing Confidential or Highly
19 Confidential Information on any other ground(s) it may deem appropriate, including, without
20 limitation, on the ground of attorney-client privilege, work product, and/or any other privilege or
21 protection provided under applicable law. This Protective Order shall neither enlarge nor affect
22 the proper scope of discovery in this Action. In addition, this Protective Order shall not limit or
23 circumscribe in any manner any rights the Parties (or their respective counsel) may have under
24 common law or pursuant to any state, federal, or foreign statute or regulation, and/or ethical rule.

25 26. If a Receiving Party (a) is subpoenaed in another action or proceeding, (b) is
26 served with a demand in another action or proceeding in which it is a party, or (c) is served with
27 any legal process by one not a party to this Protective Order, seeking materials which were
28 produced or designated as Confidential and/or Highly Confidential Information pursuant to this

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1 Protective Order, the Receiving Party shall give prompt actual written notice by hand, facsimile,
2 or electronic mail transmission to all counsel of record for such Producing Party no later than ten
3 (10) business days of receipt of such subpoena, demand or legal process or such shorter notice as
4 may be required to provide other parties with the opportunity to object to the immediate
5 production of the requested discovery materials to the extent permitted by law. The burden of
6 opposing enforcement of the subpoena shall fall upon the party or non-party who produced or
7 designated the discovery material as Confidential and/or Highly Confidential Information. In the
8 event a Producing Party objects to the production of the Confidential and/or Highly Confidential
9 in any manner, the Receiving Party shall not disclose or produce any Confidential or Highly
10 Confidential Information absent a direct court order to do so. Compliance by the Receiving
11 Party with any order directing production pursuant to a subpoena of any Confidential and/or
12 Highly Confidential Information shall not constitute a violation of this Protective Order.
13 Nothing in this Protective Order shall be construed as authorizing a party to disobey a lawful
14 order issued in another action.

15 27. Within thirty (30) calendar days after the later of the final disposition of this
16 action or the Ohio actions, all Confidential and/or Highly Confidential Information produced by
17 an opposing party or non-party (including, without limitation, any copies, extracts or summaries
18 thereof) as part of discovery in this action shall be destroyed by the parties to whom the
19 Confidential and/or Highly Confidential Information was produced, and each counsel shall, by
20 declaration delivered to all counsel for the Producing Party, affirm that all such Confidential
21 and/or Highly Confidential Information (including, without limitation, any copies, extracts or
22 summaries thereof) has been destroyed; provided, however, that each counsel shall be entitled to
23 retain pleadings, motions and memoranda in support thereof, declarations or affidavits,
24 deposition transcripts and videotapes, or documents reflecting attorney work product or
25 consultant or expert work product, even if such material contains or refers to Confidential and/or
26 Highly Confidential Information, but only to the extent necessary to preserve a litigation file
27 with respect to this action.
28

1 28. This Protective Order may be signed in counterparts, and a facsimile or "PDF"
2 signature shall have the same force and effect as an original ink signature.

3 29. The obligations of this Protective Order shall survive the termination of the
4 action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
5 information disclosed hereunder.

6 RESPECTFULLY SUBMITTED this 10th day of November, 2014.

7 McDONALD CARANO WILSON LLP

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IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: November 12, 2014

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EXHIBIT A

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 CLARKWESTERN DIETRICH BUILDING
4 SYSTEMS LLC d/b/a CLARKDIETRICH, an
Ohio limited liability company,

Case No.: 2:14-cv-01319-RFB-GWF

5 Plaintiff,

6 vs.

7
8 ALLSTEEL & GYPSUM PRODUCTS, INC.,
a Florida corporation; CONSOLIDATED
9 FABRICATORS CORP., a California
corporation; CRACO MANUFACTURING,
10 INC., a South Carolina corporation;
CUSTOM STUD, INC., a Minnesota
11 corporation, DESIGN SHAPES IN STEEL,
INC., a California corporation, FRAMETEK
12 STEEL PRODUCTS, INC., a California
corporation; and UNITED METAL
13 PRODUCTS, INC.; a California corporation,

14 Defendants.

15
16 **ACKNOWLEDGMENT OF PROTECTIVE ORDER**

17 I, _____ declare as follows:

- 18 1. My address is _____.
- 19 2. My present employer is _____.
- 20 3. My present occupation or job title is _____.
- 21 4. I have received a copy of the Protective Order filed in the above-entitled action, signed
- 22 by the Court on _____.
- 23 5. I have carefully read and understand the provisions of the Protective Order.
- 24 6. I certify that I am eligible to have access to materials designated as

25 Confidential

26 For Authorized Counsel Only

27 under the terms of the Protective Order.

28
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- 7. I agree to be bound by all provisions of the Protective Order.
- 8. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action, any Confidential Information disclosed to me.
- 9. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am retained or from whom I received it at the conclusion of my retainer or at the final termination of the litigation.
- 10. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

(Signature)