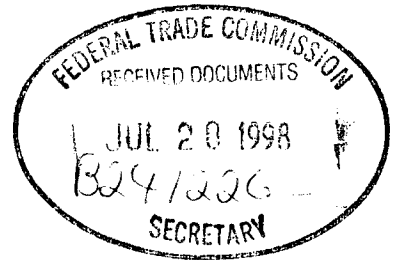


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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of

INTEL CORPORATION,

a corporation.

Docket No. 9288

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter (the "Matter") against improper use and disclosure of confidential information submitted or produced in connection with this Matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

DEFINITIONS

1. "Matter" means the matter captioned *In the Matter of Intel Corporation*, Docket Number 9288, pending before the Federal Trade Commission, and all subsequent appellate or other review proceedings related thereto.

2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting or purporting to act on its behalf, excluding persons retained as consultants or experts for purposes of this Matter.

3. "Respondent" or "Intel" means Intel Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2200 Mission College Boulevard, Santa Clara, California 95052.

4. "Party" means either the FTC or Intel.

5. "Outside Counsel" means the law firm(s) that is/are counsel of record for Respondent in this Matter and its/their associated attorneys; persons regularly employed by such law firm(s) (including legal assistants, clerical staff, and information management personnel) and temporary personnel retained by such the law firm(s) to perform legal or clerical duties, or to provide logistical litigation support with regard to this Matter; provided that any attorney associated with Outside Counsel shall not be a director, officer or employee of Respondent.

6. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Discovery Material to any of the Parties. For purposes of Confidential Discovery Material of a Third Party that either is in the possession, custody or control of the FTC or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that originally provided the Confidential Discovery Material to the FTC. The Producing Party shall also mean the FTC for purposes of any document or material prepared by, or on behalf of the FTC.

7. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a party to this Matter -- including without limitation Digital Equipment Corporation ("Digital"), Intergraph Corporation ("Intergraph") and Compaq

Computer Corporation ("Compaq") -- and their employees, directors, officers, attorneys and agents.

8. "Expert/Consultant" means experts or other persons who are retained to assist complaint counsel or Respondent's counsel in preparation for trial or to give testimony at trial.

9. "Related Proceedings" means the investigations conducted by the FTC of Intel's (a) acquisition of Chips & Technologies, Premerger File No. 97-3163 or any subsequent file number; (b) acquisition of a minority stake in Real 3D, Inc., Premerger File No. 97-3058 or any subsequent file number; (c) acquisition of certain assets of Digital, File No. 981-0040; and (d) conduct, File No. 951-0028.

10. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, telegram, meeting minute, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation, including all drafts of all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.

11. "Discovery Material" includes without limitation deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents produced pursuant to compulsory process or voluntarily in lieu thereof, and any other documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter.

12. "Confidential Discovery Material" means all Discovery Material that is designated by a Producing Party as confidential and that is covered by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), and Commission Rule of Practice § 4.10(a)(2), 16 C.F.R. § 4.10(a)(2); submitted to the FTC pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, or formal interpretations or rules promulgated thereunder, 16 C.F.R. Part 800; or Section 26(c)(7) of the Federal Rules of Civil Procedure and precedents thereunder. Confidential Discovery Material shall include non-public commercial information, the disclosure of which to Respondent or Third Parties would cause substantial commercial harm or personal embarrassment to the disclosing party. The following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Discovery Material: strategic plans (involving pricing, marketing, research and development, product roadmaps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); personnel files and evaluations; information subject to confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer or market research or analyses applicable to

current or future market conditions, the disclosure of which could reveal Confidential Discovery Material.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter and shall not be used for any other purpose, including without limitation any business or commercial purpose. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.

2. Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9288" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, where appropriate, to each page of a transcript containing such Confidential Discovery Material. Such designations shall constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

3. All transcripts of investigational hearings and interviews, and all documents heretofore obtained by compulsory process or voluntarily in lieu thereof, or otherwise designated confidential by the Producing Party, which were obtained during the pre-complaint stage of this

Matter or Related Proceedings, shall be treated as Confidential Discovery Material. Material previously produced by Intel and designated as a "Restricted Document" shall be treated as Confidential Discovery Material as provided herein.

4. All transcripts of a deposition of a Party or Third Party shall be deemed as containing Confidential Discovery Material without designation by a Party or Third Party unless and until the Administrative Law Judge determines, pursuant to the procedure set forth in paragraph 7 below, that the transcript or any portion thereof does not constitute or contain Confidential Discovery Material.

5. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except to:

- (a) complaint counsel and the Commission, as permitted by the Commission's Rules of Practice;
- (b) Outside Counsel;
- (c) Experts/Consultants;
- (d) the Administrative Law Judge;
- (e) court reporters and deposition transcript reporters;
- (f) judges and other court personnel of any court having jurisdiction over any proceedings involving this Matter;
- (g) any person to whom counsel for a Producing Party expressly authorizes, in writing, disclosure of Confidential Discovery Material so designated by the Producing Party; and
- (h) the author and recipient of Confidential Discovery Material (as indicated on

the face of the document, record or material), and any individual who was in the direct chain of supervision of the author at the time the Confidential Discovery Material was created or received; provided that such disclosure is made by respondent's counsel or complaint counsel in connection with a deposition or evidentiary hearing in this Matter.

A request to a Producing Party to disclose Confidential Discovery Material made under subparagraph 5(g) above shall only be disclosed to persons on a need to know basis, and in no event shall such requests be disclosed to any person not covered by this paragraph 5, absent an order of the Administrative Law Judge.

6. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant unless such Expert/Consultant agrees in writing:

(a) to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

(b) to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention;

(c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

(d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

7. This paragraph governs the procedures for the following specified disclosures and challenges to designations of confidentiality.

(a) Disclosure to Experts/Consultants

If any Party desires to disclose Confidential Discovery Material to any Expert/Consultant, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific Expert/Consultant to whom the Confidential Discovery Material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the proposed Expert/Consultant, and a current curriculum vitae of the Expert/Consultant identifying all other present and prior employers and/or firms in the computer- or microprocessor-related fields for which or on behalf of which the Expert/Consultant has been employed or done consulting work in the preceding four (4) years. The Producing Party may object to the disclosure of the Confidential Discovery Material within five (5) business days of receiving notice of an intent to disclose the Confidential Discovery Material to an Expert/Consultant by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Confidential Discovery Material to the identified Expert/Consultant, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified Expert/Consultant. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written

application to the Administrative Law Judge as provided by paragraph 7(d) of this Protective Order. If the Producing Party does not object to the disclosure of Confidential Discovery Material to the Expert/Consultant within five (5) business days, the disclosing Party may disclose the Confidential Discovery Material to the identified Expert/Consultant.

(b) Disclosure to New Persons

If any Party desires to disclose a Producing Party's Confidential Discovery Material to any person other than those referred to in paragraph 5 of this Protective Order ("New Person"), the disclosing Party shall inform the Producing Party of its desire to disclose such material. Such notice shall identify those materials sought to be disclosed with specificity (*i.e.*, by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials), and the specific New Person (by name and business affiliation) to whom such material is to be disclosed. The Producing Party may object to the disclosure of the Confidential Discovery Material within five (5) business days of receiving notice of an intent to disclose the Confidential Discovery Material to the New Person by providing the disclosing Party with a written statement of the reasons for the objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Confidential Discovery Material to the New Person, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified New Person. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written

application to the Administrative Law Judge as provided by paragraph 7(d) of this Protective Order. If the Producing Party does not object to the disclosure of the Confidential Discovery Material to the New Person within five (5) business days, the disclosing Party may disclose the Confidential Discovery Material to the identified New Person.

(c) Challenges to Confidentiality Designations

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material, the challenging Party shall notify the Producing Party and all Parties of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation within five (5) business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party preserving its rights and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five (5) business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 7(d) of this Protective Order. If the Producing Party does not preserve its rights within five (5) business days, the challenging Party may alter the designation as

contained in the notice. The challenging Party shall notify the Producing Party and the other Party of any changes in confidentiality designations.

(d) Resolution of Disclosure or Confidentiality Disputes

If negotiations under subparagraphs 7(a)-(c) of this Protective Order have failed to resolve the issues, a Party seeking to disclose Confidential Discovery Material or challenging a confidentiality designation may make written application to the Administrative Law Judge for relief. Such application shall be served on the Producing Party and the other Party, and be accompanied by a certification that the meet and confer obligations of this paragraph have been met, but that good faith negotiations have failed to resolve outstanding issues. The Producing Party and any other Party shall have five (5) business days to respond to the application, which time may be extended by the Administrative Law Judge. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative Law Judge of the propriety of a requested disclosure or change in designation.

8. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 5(b) and 5(c) of this Protective Order until such person has executed and transmitted to respondent's counsel or complaint counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A", which is incorporated herein by reference. Respondent's counsel and complaint counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is

reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order. If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No. 9288."

9. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraph 5 above. If Confidential Discovery Material is produced without the legend attached, such document shall be treated as Confidential from the time the Producing Party advises complaint counsel and Respondent's counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties will return promptly or destroy the unmarked documents.

10. If the FTC (a) receives a discovery request that may require the disclosure by it of a Third Party's Confidential Discovery Material; or (b) intends to or is required to disclose, voluntarily or involuntarily, a Third Party's Confidential Discovery Material (whether or not such disclosure is in response to a discovery request), the FTC promptly shall notify the Third Party of either receipt of such request or its intention to disclose such material. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Third Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Third Party of its rights hereunder.

11. If anyone receives a discovery request in another proceeding that may require the disclosure of a Producing Party's Confidential Discovery Material, the subpoena recipient promptly shall notify the Producing Party of receipt of such request. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Producing Party at least five (5) business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Producing Party of its rights hereunder. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the subpoena recipient or anyone else covered by this Order to challenge or appeal any such order requiring production of Confidential Discovery Material, or to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission.

12. This Order governs the disclosure of information during the course of discovery and does not constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice ("Rule"), 16 C.F.R. § 3.45.

13. In the event that any Confidential Discovery Material, or confidential information derived therefrom, is contained in any pleading, motion, exhibit or other paper (collectively "papers") filed or to be filed with the Secretary of the FTC, the party filing the paper shall file the papers under seal and advise the Secretary of the Commission of the filing of such Confidential Discovery Material. The filing party shall provide the other Party and the Producing Party with notice of such filing to allow the Producing Party to apply to the Administrative Law Judge for an *in camera* order pursuant to Rule 3.45, 16 C.F.R. § 3.45. The Secretary shall maintain the papers

under seal for ten (10) business days from the date the papers were served on the other Party and the Producing Party, or while the Producing Party's application for *in camera* treatment is pending before the Administrative Law Judge, whichever is longer. In the event that *in camera* treatment is ordered for a portion of any papers so filed, the filing party shall file an expurgated version with the Secretary within five (5) business days of the date the Administrative Law Judge serves the order. If the Administrative Law Judge denies the application, the Secretary shall unseal the papers and place them on the public record.

14. At or near the time the parties exchange proposed exhibits, the parties will negotiate between themselves and with Producing Parties a procedure for applying to the Administrative Law Judge for a single order providing *in camera* treatment for Confidential Discovery Material worthy of such treatment that would otherwise be placed on the public record at the hearing. If an agreement is not reached with respect to any proposed exhibit, a Party or Producing Party may file a separate application for such an order.

15. During the pendency of this Matter, should any Party seek to use Confidential Discovery Material for any purpose which would involve disclosure of the Confidential Discovery on the public record in a manner not provided for by this Protective Order, the Party seeking to disclose such material must follow the procedures set out in paragraph 7 above.

16. Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 50, 57b-2, or

with Rules 3.45 or 4.11(b)-(e), 16 C.F.R. §§ 3.45 and 4.11(b)-(e).¹ Any Party or Producing Party may move at any time for treatment *in camera* of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter.

17. At the conclusion of this Matter, Respondent's counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the record in this Matter. Complaint counsel shall dispose of all documents in accordance with Rule 4.12, 16 C.F.R. § 4.12.

18. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter.

19. This Protective Order shall not apply to the disclosure by a Producing Party or its counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

20. The production or disclosure of any Discovery Material made after entry of this Protective Order which a Producing Party claims was inadvertent and should not have been

¹ The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose information afforded *in camera* treatment or Confidential Discovery Material, to the extent necessary for proper disposition of the proceeding, is specifically reserved pursuant to Rule 3.45, 16 C.F.R. § 3.45.

produced or disclosed because of a privilege will not be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. In the event of such claimed inadvertent production or disclosure, the following procedures shall be followed:

(a) The Producing Party may request the return of any such Discovery Material within twenty (20) days of discovering that it was inadvertently produced or disclosed (or inadvertently produced or disclosed without redacting the privileged content). A request for the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control -- including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided -- unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the

Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

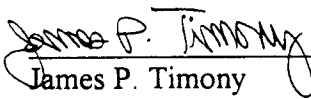
(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the Discovery Material. In any such motion, the Producing Party shall have the burden of showing that the Discovery Material is privileged and that the production was inadvertent.

21. Nothing in this Protective Order shall be construed to limit, restrict, or otherwise affect the ability of the Parties to seek to modify this Protective Order by application to the Administrative Law Judge for good cause shown.

Entry of the foregoing Protective Order is without prejudice to the right of the Parties to apply for further protective orders or for modification of any provision of this Protective Order.

SO ORDERED:

Dated: July 20, 1998



James P. Timony
Chief Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

Exhibit A

In the Matter of

INTEL CORPORATION

a corporation.

Docket No. 9288

**DECLARATION CONCERNING PROTECTIVE ORDER
GOVERNING DISCOVERY MATERIAL**

I, _____, hereby declare and certify the following as true:

1. I have read the "Protective Order Governing Discovery Material" ("Protective Order") issued by Administrative Law Judge James P. Timony on _____, 1998, in connection with the matter captioned *In the Matter of Intel Corporation*, Federal Trade Commission Docket No. 9288. I understand the restrictions on my use of any Confidential Discovery Material (as this term is used in the Protective Order) in this action and I agree to abide by the Protective Order.

2. I have been advised by [complaint counsel or Respondent's counsel] that I am authorized to receive Confidential Discovery Material pursuant to the Protective Order.

3. I understand that the restrictions on my use of such Confidential Discovery Material include:

(a) that I will use such Confidential Discovery Material only for the purposes of preparing for judicial or administrative proceedings arising out of this Matter, and for no other purposes whatsoever;

(b) that I will not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

(c) that upon the termination of my participation in this proceeding I will promptly return all Confidential Discovery Material, and all notes, memoranda, or other papers containing Confidential Discovery Material, to complaint counsel or respondent's counsel, as appropriate.

4. I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery Material also include the duty and obligation:

(a) to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

(b) to return such Confidential Discovery Material to complaint counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention; and

(c) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

5. I am fully aware that, pursuant to Section 3.42(h) of the Commission's Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions imposed by the Commission.

Date: _____

Full Name [Typed or Printed]

Signature