Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and RIN TIN INCORPORATED,	§	
Plaintiffs,	§	**CIVIL ACTION NO. 9:15-CV-026-KFG**
v.	§	
KATHY CARLTON, TERRY "T.C." CARLTON CAROL RIGGINS and CHELSEA RIGGINS,	§	**JURY TRIAL REQUESTED**
Defendants.	§	

COUNTERDEFENDANTS' RESPONSE TO COUNTERPLAINTIFFS' MOTION TO ENTER PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

Daphne Hereford and Rin Tin Incorporated ("Counterdefendants"), file this Response to Defendants Kathy Carlton, Terry "T.C." Carlton, Carol Riggins, and Chelsea Riggins' Motion to Enter Protective Order (Dkt. 51) ("Motion"), as follows:

I. INTRODUCTION

As an initial matter, and by way of introduction, Counterdefendants incorporate the Factual Background of their concurrently-filed Motion to Strike Late-Produce Discovery (Dkt. 55). As seen by the content of the Motion to Strike, Counterplaintiffs' Motion to Enter Protective Order blatantly misrepresents the facts of the parties' protective order disputes by omission of the majority of details leading up to the filing of Counterplaintiffs' Motion. In sum, Counterplaintiffs failed to raise the issue of potentially entering a protective order in this case (and even represented in previous filings that no protective order was necessary) until one business day before the due date of their discovery responses, on April 15, 2016. Counsel for

Counterplaintiffs sent a proposed two-tier draft protective order by email at 4:13 pm that afternoon and requested that counsel for Counterdefendants respond with any proposed changes. Counsel for Counterdefendants responded to the request the morning of Monday, April 18, 2016, noting that because there is no proprietary technical information or trade secret material at issue in this case, there is no need for an "Attorney's Eyes Only" level of confidentiality and attached a draft single-level protective order in response for Counterplaintiffs' consideration. *See* Ex. 1, at p. 4 and Ex. 2 (Proposed One-tier Protective Order). Counterplaintiffs provided their initial responses to Counterdefendants' discovery requests on April 19, 2016 and withheld information or documents as to at least 53 separate discovery responses based on the lack of a protective order in this case. Counterdefendants immediately responded requesting supplementation and attempted to resolve the issue over the next several days and weeks, offering to extend the discovery period, to submit the issue to the Court for expedited consideration, and to stipulate to Counterplaintiffs' proposed protective order on a temporary basis until the Court could rule on the issue. Counterplaintiffs refused every offer and proceeded to submit the issue to the Court unilaterally by this Motion, twelve days after the close of discovery, and more than two weeks after Counterplaintiffs' discovery responses were due.

Counterdefendants never agreed that the issues in this case warranted an Attorneys' Eyes Only level of protection, and have reiterated from the beginning of the dispute a concern regarding their access to documents. *See* Ex. 1, at pp. 4-5. Counterdefendants only proposed entering a modified version of Counterplaintiffs' proposed protective order, with an additional provision related to access for parties who become pro se by order of the Court via a withdrawal, in an attempt to expeditiously resolve the dispute in good faith after Counterplaintiffs' "Of Counsel" Rob Ghio represented that there were not many documents that purportedly warranted

an Attorney's Eyes Only designation, and that Counterplaintiffs' would promptly supplement their discovery responses if the protective order issue could be resolved. Counsel for Counterplaintiffs Wendy Mills completely reversed course on that tentative agreement with Mr. Ghio and refused to supplement any discovery responses or produce documents without Counterplaintiffs' version of the protective order being entered by the Court. After apparently recognizing how untenable her position was, Ms. Mills subsequently offered to produce part of Counterplaintiffs' purportedly confidential documents on Friday, May 6, 2016, one business day before the Court's extended Motion Cut-off Deadline of May 9, 2016. *See* Ex. 3, at p. 1. Counsel for Counterdefendants executed an agreement to be bound by the terms of Counterplaintiffs' proposed protective order until the Court could rule on the protective order dispute, but specifically reserved the right to maintain objections to any proposed protective order and the timeliness of Counterplaintiffs' discovery responses. *See id*.

Counterdefendants went to great lengths to attempt to resolve these issues without submission of a disputed issue to the Court, but Counterplaintiffs have unreasonably refused a myriad of offers to address potential confidentiality concerns and/or submit a narrow disputed issue to the Court for expedited consideration. Counterplaintiffs' Motion to Enter Protective Order fails to provide any specific justification for their proposed two-tier protective order other than speculative conclusory statements and concerns that are not even relevant.

II.
LEGAL AUTHORITY AND ARGUMENT

The party seeking a protective order generally bears the burden of establishing good cause. *In re Terra Int'l, Inc.*, 134 F.3d 302, 305 (5th Cir. 1998). When parties to an action agree on entry of a protective order but differ on the order's terms, the party seeking to limit discovery bears the burden of demonstrating that "good cause" exists for the protection of that information.

Cf. id. at 306 (imposing burden of showing good cause on the party seeking a protective order). The party attempting to establish good cause must demonstrate "a clearly defined and serious injury to the party seeking closure." *Round Rock Research, LLC v. Dell Inc.*, 4:11-CV-332, 2012 WL 1848672, at *2 (E.D. Tex. Apr. 11, 2012). In the business context, such a showing requires "specific demonstrations of fact, supported where possible by affidavits and concrete examples ..." *Tinman v. Blue Cross & Blue Shield of Mich.,* 176 F.Supp.2d 743, 745-46 (E.D.Mich. 2001). A request for an attorney's eyes only designation is "the most restrictive possible protective order, confining dissemination of discovery materials to plaintiff's attorneys and expert witnesses only" and its overuse makes it "difficult, and perhaps impossible for an attorney to counsel a client to compromise or even abandon a case on the basis of information kept secret from the client." *Arvco Container Corp. v. Weyerhaeuser Co.,* 2009 WL 311125 (W.D.Mich. Feb.9, 2009); *Waite, Schneider, Bayless & Chesley Co. L.P.A. v. Davis*, 1:11-CV-0851, 2012 WL 3600106, at *5 (S.D. Ohio Aug. 21, 2012).

A. Counterplaintiffs Have Provided No Description of the Allegedly Attorneys' Eyes Only Material

Counterplaintiffs seek the most restrictive possible protective order, yet they have provided no description of the content that would justify an Attorney's Eyes Only designation in this case. They have certainly not met their burden to prove good cause or even attempted to describe a "clearly defined and serious injury" as required by the relevant case law. A showing of good cause in the business context requires "specific demonstrations of fact, supported where possible by affidavits and concrete examples—which are seen nowhere in Counterplaintiffs' Motion.

B. Counterplaintiffs Concern About a Withdrawal by Counsel for Counterdefendants is Unfounded and Not Presently Relevant

As part of the discussion of this issue with Counterplaintiffs, Counterdefendants tentatively agreed to Counterplaintiffs' proposed two-tier protective order with an additional Paragraph 10 that ensured Counterdefendants' would have access to the documents to be used against them in the event that counsel for Counterdefendants requested a withdrawal from this matter and the Court granted that withdrawal. *See* Ex. 4, at p. 4. Counterplaintiffs claim in their Motion that Counterdefendants somehow surprised them with this issue—when it has been made clear since the filing of Counterdefendants' Motion for Voluntary Dismissal of their claims (Dkt. 31, filed on December 31, 2015, at p. 2) that counsel anticipates having to withdraw in this case due to Counterdefendants' financial limitations and inability to pay legal fees. Counsel for Counterdefendants has remained in this action through mediation and the filing of summary judgment in an attempt to resolve and defend Counterplaintiffs' highly speculative and unproven defamation counterclaims.

Counterdefendants' suggested addition of Paragraph 10 is more than reasonable in the context of Counterplaintiffs' unsubstantiated confidentiality concerns. It would not even impact the operation of the protective order unless and until a party's counsel (1) filed a motion for withdrawal, (2) a party indicated an intention to proceed *pro se*; and (3) the Court granted the motion for withdrawal knowing that Paragraph 10 would allow the party access to material designated Attorney's Eyes Only (appropriate additional restrictions could even be imposed at that time if the Court felt they were necessary).

C. The Court Should Enter Counterdefendants' Proposed One-Tier Protective Order

Because Counterplaintiffs have failed to provide good cause for the entry of their proposed protective order, the Court should enter Counterdefendants' proposed one-tier protective order (Ex. 2). Alternatively, if the Court determines an Attorney's Eyes Only level of protection is warranted, Counterdefendants respectfully request that the Court enter their proposed version with the addition of Paragraph 10 (Ex. 5).

III.
CONCLUSION

For the reasons set forth herein, the Court should deny Counterplaintiffs' Motion to Enter Protective Order (Dkt. 51).

Dated: May 24, 1016

Respectfully submitted,

By: */s/ Daniel A. Noteware, Jr.*

Daniel A. Noteware, Jr.
State Bar No. 24051123
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A Professional Corporation
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(903) 597-8311
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dannynoteware@potterminton.com

ATTORNEYS FOR COUNTERDEFENDANTS DAPHNE HEREFORD and RIN TIN INC.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the electronic case filing ("ECF") system of the U.S. District Court, Eastern District of Texas, as per Local Rule CV-5(a)(3), on May 24, 2016.

/s/ *Daniel A. Noteware, Jr.*

EXHIBIT 1

Danny Noteware

From: Danny Noteware
Sent: Tuesday, April 19, 2016 11:41 PM
To: 'Wendy B. Mills'
Subject: RE: Proposed Protective Order and Motion

I have never seen a protective order agreed to without some negotiation of the specific provisions. That is why they are negotiated early in the case. Yet, you apparently expected me to just add my signature to a protective order you proposed the same day you sent it without consulting with my client. Again, the lack of a protective order is not a valid excuse for withholding discovery. If you have documents that you consider AEO, label them as such and send them to me and I will not share them with my client until we have resolved the protective order issue. You are withholding apparently key documents – all documents related to your clients' alleged damages from what I have reviewed of your responses. I need these documents immediately.

Danny Noteware

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From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Tuesday, April 19, 2016 11:27 PM
To: Danny Noteware
Subject: Re: Proposed Protective Order and Motion

I sent you a very reasonable Protective Order and you rejected it. We will not disclose the highly confidential Dreamworks and other similar agreements to give your client the opportunity to interfere again and defame them further. Since the Judge referenced one of the reasons for continuing with our Counterclaims, the fact the Ms Hereford emailed copies to Dreamworks, I think he will agree that she should not have another opportunity to do further harm.

Now that we have responded to your excessive RFA, RFP and ROGs, perhaps we can discuss proportionality under the new Federal Rules along with your Responses.

Sent from my iPhone

Wendy B. Mills

On Apr 19, 2016, at 11:06 PM, Danny Noteware <dannynoteware@potterminton.com> wrote:

> Wendy,

As I am reviewing these responses I am seeing that you are using the lack of a protective order as a justification for failing to produce documents and respond to interrogatories. That is entirely inexcusable. You have had these requests for more than 35 days. You contacted me regarding a proposed protective order one business day before the responses were due. I sent you an alternative proposal regarding a protective order after conferring with my client and you have not responded to that proposal. You had ample time to raise any confidentiality issues well before your responses were due and you failed to do so. Relying on the lack of a protective order is not a valid excuse for shirking your discovery obligations.

I expect you to produce all documents and supplement all discovery responses that were withheld due based on alleged confidentiality concerns **as soon as possible**. Please let me know a time tomorrow when you can meet and confer regarding this issue and discuss your deficient discovery responses as it appears that I will need to file a motion to compel immediately.

Danny Noteware

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From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Tuesday, April 19, 2016 9:21 PM
To: Danny Noteware
Subject: Re: Proposed Protective Order and Motion

Danny,

I sent you (all responses) several files via Box starting at 7:30 and ending around 8:30. Please confirm receipt.

Thanks,
Wendy

Sent from my iPhone

Wendy B. Mills

On Apr 19, 2016, at 5:35 PM, Danny Noteware <dannynoteware@potterminton.com> wrote:

> Wendy: what is the status of your clients' discovery responses? I am counting on having at least some response in advance of the mediation. Please advise.

Danny Noteware

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From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Monday, April 18, 2016 3:06 PM
To: Danny Noteware
Subject: Re: Proposed Protective Order and Motion

Thanks Danny,

As we discussed, I think the technical problems are related to the conversion from pdf to MS Word. Can you send me a copy of these requests in MS Word? This may speed up the process.

> On Apr 18, 2016, at 3:01 PM, Danny Noteware <dannynoteware@potterminton.com> wrote:
>
> Wendy,
>
> My clients will agree to your requested extension until Tuesday – but please send me any responses you can as soon as you have them completed.
>
> As you can imagine, I'm counting on the responses and production to provide substantive information in advance of the mediation. At this point, I have no discovery responses regarding damages, no produced documents, no alleged theory of damages, no estimated amount of alleged damages. If your responses do not address these issues I reserve the right to pursue a motion to compel, seek to extend the discovery period, pursue depositions, etc. I hope I don't have to do any of that, but I can't even evaluate the need until I see your responses. We may need to extend the discovery period anyway related to the Yanchak deposition, keep me updated on that.
>
> *Danny Noteware*
>
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From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Monday, April 18, 2016 12:58 PM
To: Danny Noteware
Subject: Re: Proposed Protective Order and Motion
Importance: High

Danny,

I am experiencing some serious technical issues and may not be able to get you the Responses to Plaintiffs' Discovery Requests by the end of the day today. Will you agree to extend the deadline to respond/object to all of Plaintiffs' Requests for Discovery, until tomorrow? This will also allow me time to talk to my clients about the Protective Order.

Thanks,
Wendy

<image001.png>

Wendy B. Mills
Manager
3102 Maple Ave.
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Dallas, Texas 75201
Voice: 214-396-6621
Voice: 214-969-5995
http://www.wbmillslaw.com
email: wbm@wbmillslaw.com

From: Danny Noteware <dannynoteware@potterminton.com>
Date: Monday, April 18, 2016 at 11:36 AM
To: "Wendy B. Mills" <wbm@wbmillslaw.com>
Subject: RE: Proposed Protective Order and Motion

My clients have no dogs and have never entered into an agreement with a studio and do not ever anticipate entering into an agreement with a studio. There is no risk of any potential competitive harm.

If the only thing that you anticipate implicating an AEO designation would be DreamWorks agreements, is there any way to redact those specific documents? I just don't want to have to get into a fight over what I can show to my clients and I don't see justification for AEO here.

Danny Noteware

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From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Monday, April 18, 2016 10:18 AM
To: Danny Noteware
Subject: Re: Proposed Protective Order and Motion

Danny,

Your clients have indicated in the past that they wished to have their dogs in the movies and enter into agreements with studios. Thus, Dreamworks' agreements and other studio agreements would be considered competitive for this reason and we can't make them available to your clients. Will you agree to this?

<image001.png>

Wendy B. Mills
Manager
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Voice: 214-969-5995
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email: wbm@wbmillslaw.com

From: Danny Noteware <dannynoteware@potterminton.com>
Date: Monday, April 18, 2016 at 9:52 AM
To: "Wendy B. Mills" <wbm@wbmillslaw.com>
Subject: RE: Proposed Protective Order and Motion

Wendy,

My clients do not believe a dual-level protective order is necessary in this case. There is no proprietary technical information or trade secret material at issue and therefore there is no need for an "Attorney's Eyes Only" level of confidentiality. We would agree to entry of the attached draft protective order, which is a straight-forward single level PO, which would provide ample protection for confidential material.

Thanks,

Danny Noteware

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dannynoteware@potterminton.com

From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Friday, April 15, 2016 4:13 PM
To: Danny Noteware
Subject: Proposed Protective Order and Motion

Danny,

Per our discussion, attached, please find our proposed Protective Order and Motion for your review. If you are in agreement, please e-sign where indicated and return to me via email and I will file with the Court.

Let me know if you have questions or proposed changes.

Thanks,
Wendy

<image001.png>

Wendy B. Mills
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Voice: 214-969-5995
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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and	§	
RIN TIN INCORPORATED,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 9:15-CV-026-KFG**
	§	
KATHY CARLTON,	§	
TERRY "T.C." CARLTON	§	**JURY TRIAL REQUESTED**
CAROL RIGGINS and	§	
CHELSEA RIGGINS,	§	
	§	
Defendants.	§	

AGREED CONFIDENTIAL AND PROTECITVE ORDER

Counterplaintiffs Kathy Carlton, Terry "T.C." Carlton, Carol Riggins and Chelsea Riggins ("Counterplaintiffs"), and Counterdefendants Daphne Hereford and Rin Tin Incorporated ("Counterdefendants"), have jointly agreed to a Confidentiality and Protective Order pursuant to Fed. R. Civ. P. 26(c), which provides as follows:

1. DEFINITIONS

(a) ***Litigation***: *Hereford, et al. v. Carlton, et al.*, 9:15-cv-026-KFG (E.D. Tex.).

(b) ***Party***: any party to this Litigation, including all of its officers, directors, employees, consultants, retained experts, and outside counsel of record (and their support staffs).

(c) ***Non-Party***: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Litigation.

(d) ***Producing Party***: a Party or Non-Party that produces disclosure or discovery material in this Litigation.

(e) ***Receiving Party***: a Party that receives disclosure or discovery material from a Producing Party.

(f) ***Designating Party***: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "Confidential."

(g) ***Challenging Party***: a Party or Non-Party that challenges the designation of information or items under this Order.

2. DESIGNATING CONFIDENTIAL MATERIAL

2.1 In producing or providing discovery, each Producing Party, acting in good faith, may designate as Confidential any document, thing or information (including testimony) containing competitively sensitive business information, individual personal financial information, non-public and competitively sensitive financial or business information, protected trade secrets, or any other proprietary, confidential or otherwise protected information. Publicly available information and/or materials that have been submitted to any governmental entity without request for confidential treatment (except where the lack of request for confidential treatment was by inadvertence) may not be designated Confidential. If such information is improperly designated Confidential, the Parties may disregard that designation.

2.2 All documents, things or information produced in this Litigation, including all copies, extracts or summaries of information obtained from any documents ("Discovery Material"), except for materials which are otherwise public, shall be used by the Parties in connection with the litigation and appeal of this action only, including enforcement of any judgment or settlement thereon. Discovery Material shall not be used by the Parties for any

other purpose, and shall not be disclosed to any other person or entity except as is necessary to litigate the action. Moreover, Discovery Material designated as Confidential, including all copies, extracts or summaries of information obtained from any Discovery Material designated as Confidential ("Confidential Material") shall be used and disclosed only as provided in this Order.

2.3 Either of the following methods shall be sufficient to designate material as Confidential: (a) prominently marking each page of each confidential document "Confidential" at or before the time of its production; or (b) labeling a storage medium of material produced in electronic format as "Confidential."

2.4 With respect to testimony or deposition transcripts, the Parties and the deponent shall have 21 days from the date upon which the testimony is given to designate the transcript or any portion thereof as Confidential within the meaning of this Order. In the event that a Party intends to use portions or excerpts of the transcript prior to the expiration of the 21-day period, such Party shall treat the transcript as Confidential.

2.5 The inadvertent failure to make a Confidential designation may be corrected in accordance with ¶5.2, below.

2.6 Non-Parties from whom discovery is sought by the Parties to this Litigation may designate information as "Confidential" consistent with the terms of this Order. Under such circumstances, information designated "Confidential" by a Non-Party is assigned the same protection as information designated by a Party. All obligations applicable to a Party receiving Discovery Material or Confidential Material from another Party shall apply to any Party receiving such information from a Non-Party.

2.7 In the event that any additional party is added to this Litigation, each additional party shall, upon agreement with the terms, be governed by this Order.

3. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3.1 If a Party disagrees with a Confidential designation, the Challenging Party may serve a written notice of objection(s) to the Designating Party, identifying each issue in dispute and the Challenging Party's position on the issue. The Challenging Party and the Designating Party shall, within 14 days of service of the written objection(s), confer concerning the objection.

3.2 If, after meeting and conferring in good faith, the Challenging Party and the Designated Party are unable to agree as to whether the Confidential designation is appropriate, the Challenging Party shall certify to the Court that the parties cannot reach an agreement as to the Confidential nature of all or a portion of the Discovery Material. Thereafter, the Designating Party shall have ten days from the date of certification to file a motion for protective order with regard to any Confidential Material in dispute. As provided by Local Rule CV-7(e)-(f), the Challenging Party shall have 14 days to file an opposition to the Designating Party's motion for protective order. The Designating Party shall have seven days to file a reply to any opposition motion filed, and the Challenging Party shall subsequently have seven days to file a sur-reply. The Designating Party shall have the burden of establishing that the disputed Confidential Material is entitled to confidential treatment. If the Designating Party does not timely file a motion for protective order, the Confidential Material in dispute shall no longer be subject to confidential treatment as provided in this Order.

4. USE OF CONFIDENTIAL INFORMATION

4.1 Confidential Material may be made available to and inspected by the following only, subject to the undertaking requirement of ¶4.2, below:

(a) the Parties and their officers, employees, consultants, and agents that are assisting in the prosecution or defense of this Litigation;

(b) counsel for the Parties and their employees, consultants and agents;

(c) the undersigned;

(d) employees of the Court in the scope of their employment only;

(e) court reporters designated by the Parties or the undersigned;

(f) expert witnesses for the Parties, their employees, consultants, agents and counsel, to the extent that such disclosure is necessary for them to prepare for this Litigation, and provided that such expert witnesses are not currently employees of, or advising or discussing employment with, or consultant to, any competitor of any Party, as far as those experts can reasonably determine;

(g) any other witnesses and their counsel, to the extent that such disclosure is relevant to the testimony of the witness; and

(h) the author(s) of the document and/or any person(s) listed as recipients.

4.2 Disclosure of Confidential Material shall be consistent with this Order. Before any such disclosure is made to persons other than the Parties, their counsel, and their respective directors and employees, the person or entity receiving the material in question shall be provided a copy of this Order and agree to be bound by all terms of this Order by signing the undertaking set forth in Exhibit A.

4.3 Nothing in this Order shall be construed to limit in any way any Party's or any other person's use of its own documents, nor shall it affect any Party's or any other person's subsequent waiver of its own prior designation with respect to its own Confidential Material.

4.4 This Order shall not be construed to impair any Party's right to object to any discovery request.

4.5 Nothing in this Order shall affect the right of any Party at any hearing or trial in this case to offer any document or testimony designated Confidential as evidence in this case. In the event of a hearing or trial in this Litigation that will likely involve the use of or testimony regarding Confidential Material, the Parties will meet and confer about a proposal to the Court for closing all or part of the hearing or trial for the purpose of protecting the Confidential Material at issue. Regardless of whether Confidential Material is used or discussed during an open trial or hearing, Confidential Material shall remain Confidential and all Parties shall continue to treat it as Confidential.

4.6 The Parties may file under seal documents designated as Confidential without further order by the Court, pursuant to Local Rule CV-5(a)(7)(A)(2).

5. INADVERTENT FAILURE TO DESIGNATE CONFIDENTIAL MATERIAL

5.1 This Order was agreed to by the Parties, among other reasons, for the purpose of facilitating the exchange of documents and information in such a manner as to limit the need to seek the Court's involvement in that process. The Parties wish to adopt procedures to expedite the production of documents in this Litigation. For these reasons, the Parties have agreed that the production of Confidential Material without the appropriate designation will not be deemed a waiver in whole or in part of a Party's prior or subsequent claim of confidentiality.

5.2 Upon notice that Confidential Material has been produced without the appropriate stamp or legend, the Producing Party may designate the materials as "Confidential" by producing corrected copies of the Confidential Material that bear the required stamp or legend. Disclosure of such information by any other Party prior to such later designation is not a violation of this Order.

6. INADVERTENT DISCLOSURE OF CONFIDENTIAL MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately: (a) notify in writing the Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve all copies of the Protected Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request such person or persons to execute the "Agreement to Be Bound by Stipulated Confidentiality and Protective Order."

7. FINAL DISPOSITION

Within 30 days of any request from a Producing Party following the conclusion of this Litigation, including any appeals, counsel for the Receiving Party shall return all Confidential Material and all copies thereof to counsel for the Producing Party. Alternatively, the Receiving Party may destroy all Confidential Material and all copies thereof and certify that destruction to counsel for the Producing Party. The Receiving Party may keep its attorney work product, pleadings, affidavits, motions, briefs, or other papers filed with the Court and the exhibits thereto, that refer or relate to any Confidential Material and agrees to maintain them in accordance with this Order.

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and	§	
RIN TIN INCORPORATED,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 9:15-CV-026-KFG**
	§	
KATHY CARLTON,	§	
TERRY "T.C." CARLTON	§	**JURY TRIAL REQUESTED**
CAROL RIGGINS and	§	
CHELSEA RIGGINS,	§	
	§	
Defendants.	§	

AGREEMENT TO BE BOUND BY
CONFIDENTIAL AND PROTECITVE ORDER

I have read the Stipulated Confidentiality and Protective Order in the above-captioned action. I understand its terms and agree to be fully bound by them, and I hereby submit to the jurisdiction of the United States District Court for the Eastern District of Texas for purposes of enforcement of the Stipulated Confidentiality and Protective Order. I further agree not to disclose any Discovery Material, including Confidential Material, as those terms are defined in the Stipulated Confidentiality and Protective Order, except as permitted by the Stipulated Confidentiality and Protective Order.

[Signature on following page.]

_____

Signature

_____

Name

_____

Affiliation

EXHIBIT 3

Danny Noteware

From: Danny Noteware
Sent: Friday, May 06, 2016 11:04 AM
To: 'Wendy B. Mills'
Cc: rghio@wbmillslaw.com
Subject: RE: Extension of Motion Cut-Off Deadline

Wendy,

This is something that should have been done weeks ago, as I requested. But send me the draft Rule 11 and whatever responses / documents you can as soon as you can send them. I still intend to comply with the existing Motion Cut-off deadline. Also, by cooperating on this issue my clients are not waiving any objections to the timeliness of Counterplaintiffs' discovery responses or conceding anything as to the pending motion for protective order.

Danny Noteware

POTTER MINTON-----A Professional Corporation
110 North College, Suite 500
Tyler TX 75702
tel. 903-597-8311 ext. 253
direct dial 903-525-2253
fax. 903-593-0846
dannynoteware@potterminton.com

From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Friday, May 06, 2016 10:46 AM
To: Danny Noteware
Cc: rghio@wbmillslaw.com
Subject: Re: Extension of Motion Cut-Off Deadline

Danny,

I will prepare a Rule 11 Agreement to provide you with information and Documents designated as Confidential, but not AEO Responses. It may take me a little while to be able to get the supplemental ROGs and/ RFAs, but should be able to get the RFP supplemental documents to you by early afternoon. This is the best I can do. This way, you will only be missing a few responses.

Wendy

Sent from my iPhone

Wendy B. Mills

On May 5, 2016, at 12:38 PM, Danny Noteware <dannynoteware@potterminton.com> wrote:

Wendy,

My clients will not agree to an additional extension of the Motion Cut-off deadline. We have proposed more than reasonable accommodations to allow for any confidentiality concerns related to any supplementation / additional production and to submit this issue to the Court for prompt resolution and you have refused all of them. As I have reiterated, the fact that a protective order has not been entered in this case does not excuse Counterplaintiffs from complying with their discovery obligations – particularly in light of the fact that my clients agreed to stipulate to ***your*** protective order until this issue could be resolved by the Court. We will consider any attempts to supplement or provide further responses as untimely and proceed under the existing case deadlines.

The only reason for extending the Motion Cut-off deadline originally was because Rob and I made progress towards resolving these disputes, and he indicated Counterplaintiffs would provide supplemental responses this week in advance of the extended 5/9 deadline (see my email of 4/27 at 3:04 pm). You apparently totally reversed course on that plan and now have filed your motion ironically accusing me of unreasonably changing my position related to the protective order.

Danny Noteware

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direct dial 903-525-2253
fax. 903-593-0846
dannynoteware@potterminton.com

From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Wednesday, May 04, 2016 5:05 PM
To: Danny Noteware
Cc: rghio@wbmillslaw.com
Subject: Extension of Motion Cut-Off Deadline

Danny,

Since the trial was continued to September 19 and we are waiting for the Protective Order to be entered by the Court, will you agree to extend the above-referenced deadline until Friday, June 17? This will give us at least 90 days before trial and time to work out any discovery issues and review deposition transcripts that I just received. I usually prefer 120 days, but under the circumstances, it appears that this may be necessary.

Thanks,

<image001.png>

Wendy B. Mills
Manager
3102 Maple Ave.
Suite 400
Dallas, Texas 75201

Voice: 214-396-6621
Voice: 214-969-5995
http://www.wbmillslaw.com
email: wbm@wbmillslaw.com

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EXHIBIT 4

Danny Noteware

From: Danny Noteware
Sent: Wednesday, May 04, 2016 1:41 PM
To: 'Wendy B. Mills'
Cc: 'rghio@wbmillslaw.com'
Subject: RE: Conference re discovery responses

Wendy,

How are you planning to proceed as to this issue? I do not understand the continued delay. I have my portion of the joint motion prepared if that is how you want to proceed. Please advise.

Danny Noteware

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tel. 903-597-8311 ext. 253
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fax. 903-593-0846
dannynoteware@potterminton.com

From: Danny Noteware
Sent: Tuesday, May 03, 2016 5:51 PM
To: 'Wendy B. Mills'
Cc: rghio@wbmillslaw.com
Subject: RE: Conference re discovery responses

I'm just trying to explain the easiest way to submit this to the Court so that we will get the quickest ruling. See the attached rough draft. This is what they would tell us to do if we called the discovery hotline. This is exactly what I proposed doing Monday morning.

Danny Noteware

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dannynoteware@potterminton.com

From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Tuesday, May 03, 2016 4:25 PM
To: Danny Noteware
Cc: rghio@wbmillslaw.com
Subject: Re: Conference re discovery responses

You have turned this matter on its head. You were the one who rejected a perfectly reasonable Protective Order and are now posturing again that you want to withdraw. Your game-playing is outrageous and costly to everyone. If anyone has a right to seek and obtain attorney fees for wasting time in this matter, it is Counterplaintiffs. This was a simple matter that you could have solved by signing the Protective Order like every other reasonable attorney who has signed it before. If you did not like our designation on any document, you could have objected, like every other reasonable attorney would do if they had a reasonable objection to the designation. No, you could not do this, you had to spend great lengths of time first agreeing to a Rule 11 at mediation, then deciding not to sign the Rule 11 Agreement I sent you. Later, you wasted my Of Counsel's time by saying for the first time that the reason that you did not want to sign the Protective Order was because you might withdraw and proceeded to send us this ridiculous proposal that would result in my clients waiving rights to object if or when, if ever, you decide to withdraw. I am done playing your games.

I will file our Motion for Protective Order tomorrow and consider you to be opposed to it.

WB Mills, pllc

Wendy B. Mills
Manager
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Voice: 214-969-5995
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From: Danny Noteware <dannynoteware@potterminton.com>
Date: Tuesday, May 3, 2016 at 4:07 PM
To: "Wendy B. Mills" <wbm@wbmillslaw.com>
Cc: "rghio@wbmillslaw.com" <rghio@wbmillslaw.com>
Subject: RE: Conference re discovery responses

1. I have not said that I am withdrawing now, just that I likely will have to withdraw at some point. You will be able to state your opposition to any motion to withdrawal and raise any concerns if and when it arises but it is not relevant now.

2. I have already agreed to proceed under a Rule 11 agreement where the parties will proceed as if your Protective Order is applicable and I will not provide any AEO documents to my client until the Court rules on the PO (regardless of whether I withdraw or not). Do you not trust my word? How can I bend over backwards any further on this issue?

3. If we call the discovery hotline, the magistrate on duty is going to tell us to submit an emergency joint motion for entry of a partially disputed protective order – which is exactly what I am proposing. And you will have wasted more of my time and delayed even further on these issues.

I will send you a shell for a joint motion this evening so that you can add in your arguments related to the protective order – if it is not agreeable to you I will join a call to the discovery hotline tomorrow. But I will reiterate that my position is that the call is not necessary and reserve my right to seek reimbursement of fees for having to waste further time on this issue.

Danny Noteware

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direct dial 903-525-2253
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dannynoteware@potterminton.com

From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Tuesday, May 03, 2016 2:53 PM
To: Danny Noteware
Cc: rghio@wbmillslaw.com
Subject: Re: Conference re discovery responses

Danny,

I believe this is a discovery dispute and that the Discovery hotline magistrate should be able to handle it. The magistrate judge will tell us if it is not something he/she can handle. Without a valid Protective Order in place, I can't agree to produce the Confidential documents or the few Attorney Eyes Only Confidential documents that exist, even with a Rule 11 agreement, since you are now arguing that you want to withdraw. You have essentially argued that your client is judgment proof, because she allegedly has no money, so there would be little that we could do to her if she violates any Order and you and your firm are allowed to walk away. Nonetheless, if you want to send me the revised Opposed Motion that you propose submitting to the Court, so that I can see exactly what you are proposing, I will look at it. I don't have a problem filing separate Motions for entry of the Protective Order, but think that this is likely to take a long time, so we should contact the Magistrate as I suggest.

As we discussed last week, we will oppose your withdrawal, as it will prejudice the Parties and this Protective Order is just one example of such prejudice. Further, while your client terminated Rin Tin, Inc., it is still an entity that is a Party in a Federal lawsuit, and as such, requires representation by an attorney, so I doubt that you will be allowed to withdraw from representing the entity at the very least. Courts have denied Motions to Withdraw for this reason.
28 U.S.C. 1654 states that "in all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." Courts have uniformly interpreted this statute to mean that **corporations, partnerships, or associations are not allowed to appear in federal court other than through a licensed attorney. *Rowland v. California Men's Colony,* 506 U.S. 194, 202–203, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993); *see also Memon v. Allied Domecq QSR,* 385 F.3d 871, 873 (5th Cir.2004); *see also Donovan v. Road Rangers Coutnry Junction, Inc.,* 736 F.2d 1004, 1005 (5th Cir.1984) (per curiam) (quoting *K.M.A., Inc. v. General Motors Acceptance Corp.,* 652 F.2d 398, 399 (5th Cir.1982)). Therefore, a corporation is not permitted to appear *pro se. See Robinette v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,*No. 3:97–CV–**

0353–D, 1998 WL 641815, 1998 U.S. Dist. LEXIS 14763, at *3 (N.D.Tex. Sept.16, 1998). Although 28 U.S.C. § 1654permits an individual to proceed *pro se* in federal court, the statute does not permit an individual to appear on behalf of a corporation. *See Bischoff v. Waldorf,* 660 F.Supp.2d 815, 820 (E.D.Mich.2010) (citing *Doherty v. American Motors Corp.*, 728 F.2d 334, 340 (6th Cir.1984); *Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423, 1427 (7th Cir.1985) (A corporation "is an abstraction, and an abstraction may not appear *pro se.*")).

We will agree to reasonable extensions to avoid prejudicing Counterdefendants, but can't agree to give you documents, without a Court Order. Thus, I suggest we talk with the Magistrate on duty tomorrow, since it is getting late today and I have to address another matter now that I have spent considerable time addressing this matter.

WB Mills, pllc

Wendy B. Mills
Manager
3102 Maple Ave.
Suite 400
Dallas, Texas 75201
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Voice: 214-969-5995
http://www.wbmillslaw.com
email: wbm@wbmillslaw.com

From: Danny Noteware <dannynoteware@potterminton.com>
Date: Monday, May 2, 2016 at 11:18 AM
To: "Wendy B. Mills" <wbm@wbmillslaw.com>
Cc: "rghio@wbmillslaw.com" <rghio@wbmillslaw.com>
Subject: RE: Conference re discovery responses

Wendy,

Following up our discussion of the proposed protective order my clients would prefer the single tier "Confidential" protective order, but would be willing to agree to the attached draft PO with the inclusion of Paragraph 10 regarding *pro se* parties (this is the same redlined draft of your order I circulated last week with all changes except those related to Paragraph 10 accepted). If your clients are not willing to agree to the addition of Paragraph 10 then I suggest we submit the issue to the Court in a Joint Opposed Motion for Entry of Protective Order. I'm attaching an example from another case. We basically just tell the Court we have agreement for everything except one provision and then include a short explanation (say 1 or 2 pages?) from each side for the disputed provision. If that sounds ok I can send you a draft so you can add your explanation and we can get this submitted to the Court.

We should also enter into a side agreement that we'll proceed as if some version of the PO is in place until a ruling from the Court because as we know it may be a while before something issues. Let me know if you have a suggestion on that.

Thanks,

Danny Noteware

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dannynoteware@potterminton.com

From: Danny Noteware
Sent: Wednesday, April 27, 2016 4:21 PM
To: 'Wendy B. Mills'
Cc: rghio@wbmillslaw.com
Subject: RE: Conference re discovery responses

Ok, thank you.

Danny Noteware

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direct dial 903-525-2253
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dannynoteware@potterminton.com

From: Wendy B. Mills [mailto:wbm@wbmillslaw.com]
Sent: Wednesday, April 27, 2016 4:19 PM
To: Danny Noteware
Cc: rghio@wbmillslaw.com
Subject: Re: Conference re discovery responses

Thanks Danny,

If you will make this a Joint Motion as you referenced earlier, I think that may be better. As long as there are no substantive changes other than the change to a Joint Motion, feel free to file and affix my e-signature thereto.

Wendy

WB Mills, pllc

Wendy B. Mills
Manager
3102 Maple Ave.
Suite 400
Dallas, Texas 75201
Voice: 214-396-6621

Voice: 214-969-5995
http://www.wbmillslaw.com
email: wbm@wbmillslaw.com

From: Danny Noteware <dannynoteware@potterminton.com>
Date: Wednesday, April 27, 2016 at 4:03 PM
To: "rghio@wbmillslaw.com" <rghio@wbmillslaw.com>
Cc: "Wendy B. Mills" <wbm@wbmillslaw.com>
Subject: RE: Conference re discovery responses

Wendy,

As we just discussed on the phone – here is a draft unopposed motion for extension of the motion cut-off deadline. Please confirm that this is ok to file.

Thanks,

Danny Noteware

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dannynoteware@potterminton.com

From: Danny Noteware
Sent: Wednesday, April 27, 2016 3:04 PM
To: 'rghio@wbmillslaw.com'
Cc: 'Wendy B. Mills'
Subject: RE: Conference re discovery responses

Rob,

As we discussed yesterday, can you confirm that your clients will not oppose a motion to extend the motion cut-off deadline which is currently Friday 4/29? With things so up in the air I would like to move that deadline to Monday 5/9 (unless you think it will take longer to turn around responses). Let me know if that is agreeable. If so, I am going to go ahead and file the motion because I will be out of the office Thursday and Friday.

Thank you,

Danny Noteware

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dannynoteware@potterminton.com

From: Danny Noteware
Sent: Tuesday, April 26, 2016 5:47 PM
To: 'rghio@wbmillslaw.com'
Cc: Wendy B. Mills
Subject: RE: Conference re discovery responses

Rob,

Following up our call today, I'm attaching a redlined draft of the Protective Order that Wendy had originally circulated. As we discussed, it would be helpful if you could give me confirmation that your clients' only intend to produce a small subset of documents as AEO at this time (say five or fewer or if you can give me the exact number and brief description, even better).

As we discussed, supplementation of the discovery responses that purport to rely on an objection based on the lack of a protective order will likely address most of my concerns at this point (of course that will depend upon the supplement obviously). By my count there are 53 responses that cite to the lack of a protective order as a basis for withholding discovery:

- RFPs
  - Carol: 12, 13, 14, 15, 19, 20, 21, 23, 24, 25
  - Chelsea: 4, 5, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25
  - Kathy: 4, 5, 12, 14, 15
  - T.C.: 6, 9
- INTs
  - Carol: 6, 7, 8, 9, 10, 13, 14, 20, 21
  - Chelsea: 6, 7, 8, 9, 10, 13, 14, 21, 22
  - Kathy: 14, 15
  - T.C.: 7, 9
- RFAs
  - Chelsea: 31

In addition, here are some specific issues that may not be addressed by the protective order issue:

- INTs
  - Carol 8 – provides identical response from INT 7 when the subject is now the website and not ARFkids letter
  - Carol 9-12 – provides reference to Answer and Counterclaims which provides no substantive response to these interrogatories
  - Chelsea 7 – response appears to copy and paste response from Carol as it says "my daughter"
  - Chelsea 11-12 - provides reference to Answer and Counterclaims which provides no substantive response to these interrogatories
  - Kathy 4 – says that a response is being provided but does not include one

- Kathy 5, 7-10 and T.C. 2-6 – only response provided is "See Documents produced via link" which does not comport with Rule 33(d), see below:

  A plaintiff may not simply refer a defendant to a mass of records but must "specifically identify which documents contain the requested information in its answer to the interrogatory. If the party cannot comply with these requirements, it must otherwise answer the interrogatory fully and completely." *Caritas Techs., Inc. v. Comcast Corp.*, No. 2:05-CV-339, 2006 U.S. Dist. LEXIS 94879, at *9 (E.D. Tex. Feb. 10, 2006).

Just for clarification, though we are continuing to work on these issues, by doing so I am not conceding any argument that future supplemental discovery responses are not timely. As reflected by my considerable correspondence with Wendy last week, our position is that these discovery responses were due last Monday 4/18 (which we agreed to extend to Tuesday 4/19) and we sufficiently identified deficiencies before the close of discovery.

Danny Noteware

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From: Rob Ghio [mailto:rghio@wbmillslaw.com]
Sent: Tuesday, April 26, 2016 10:29 AM
To: Danny Noteware
Cc: Wendy B. Mills
Subject: RE: Conference re discovery responses

3:15 should work.

Rob Ghio

3102 Maple Ave.
Suite 400
Dallas, Texas 75201
Voice: 214-396-6621
http://www.wbmillslaw.com
email: rghio@wbmillslaw.com

From: "Danny Noteware" <dannynoteware@potterminton.com>
Sent: Tuesday, April 26, 2016 10:19 AM
To: "rghio@wbmillslaw.com" <rghio@wbmillslaw.com>
Subject: RE: Conference re discovery responses

How about 3 / 3:15?

Danny Noteware

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direct dial 903-525-2253
fax. 903-593-0846
dannynoteware@potterminton.com

From: Rob Ghio [mailto:rghio@wbmillslaw.com]
Sent: Tuesday, April 26, 2016 9:27 AM
To: Danny Noteware
Subject: RE: Conference re discovery responses

I have appointments from 1-3 and 4-5

Rob Ghio

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Voice: 214-396-6621
http://www.wbmillslaw.com
email: rghio@wbmillslaw.com

From: "Danny Noteware" <dannynoteware@potterminton.com>
Sent: Tuesday, April 26, 2016 12:19 AM
To: "rghio@wbmillslaw.com" <rghio@wbmillslaw.com>
Cc: "Wendy B. Mills" <wbm@wbmillslaw.com>
Subject: RE: Conference re discovery responses

Would 1:30 work on your end?

Danny Noteware

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From: Rob Ghio [rghio@wbmillslaw.com]
Sent: Monday, April 25, 2016 6:00 PM
To: Danny Noteware
Cc: Wendy B. Mills
Subject: Conference re discovery responses

Danny,

I've had a chance to look at the discovery responses and discuss the documents in a little more detail with Wendy. I focused on the interrogatories, as that is where you said your major concerns are. I think we are in good shape to talk tomorrow, although you have mentioned supplementation of several of the responses without specifying your concerns. We can go over that by phone.

Let me know what time you would like to talk. I'm usually in the office by 9, and my morning is open (for now...been that kind of month). You can call me on my mobile, 214-477-8100.

Rob Ghio

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EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and	§	
RIN TIN INCORPORATED	§	
	§	
Plaintiffs / Counterdefendants,	§	
v.	§	**CASE NO: 9:15-CV-00026-KFG**
	§	
KATHY CARLTON,	§	
TERRY "T.C." CARLTON,	§	**JURY TRIAL REQUESTED**
CAROL RIGGINS and	§	
CHELSEA RIGGINS	§	
	§	
Defendants / Counterplaintiffs.	§	

AGREED PROTECTIVE ORDER

Upon agreement of the parties and good cause appearing therefor,

IT IS HEREBY ORDERED THAT, the following procedures shall govern discovery of confidential information and documents produced or disclosed by the parties ("Discovery Material") in this litigation:

1. "Confidential" information refers to Discovery Material that the Producing Party in good faith regards as confidential or proprietary information that it would not ordinarily disclose, as well as any copies or summaries of such information or any material that reveal the contents of such information.

2. "Attorney's Eyes Only" information refers to Discovery Material that the Producing Party in good faith regards as confidential or proprietary information that is particularly sensitive, as well as any copies or summaries of such information or materials that otherwise reveal the contents of such information and includes:

   a. proprietary technical information and specifications;

b. trade secrets; and

c. any other information the disclosure of which is likely to cause substantial competitive harm to the Producing Party or to any third-party.

3. All or any portion of any Discovery Material may be designated as Confidential information or Attorney's Eyes Only information provided such designation is made in good faith and once designated, such material shall be treated as Confidential information or Attorney's Eyes Only information, as appropriate, under the terms of this Protective Order until such designation is withdrawn by the Producing Party, by an Order of this Court, or as set forth in this Agreed Protective Order.

4. Documents may be designated as Confidential information by placing a stamp on each page that reads, "CONFIDENTIAL." Documents may be designated as Attorney's Eyes Only information by placing a stamp on each page that reads, "ATTORNEY'S EYES ONLY." Electronically stored information may be designated as Confidential information by placing a mark that reads, "CONFIDENTIAL" on the information or media containing the information that is sought to be protected. Electronically stored information may be designated as Attorney's Eyes Only information by placing a mark that reads, "ATTORNEY'S EYES ONLY" on the information or media containing the information that is sought to be protected.

5. Responses to Interrogatories, Requests for Production of documents, information or things and Requests for Admission, may be designated as Confidential information or Attorney's Eyes Only information by placing the legend, "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," as appropriate, on the first page of such document and on any pages that contain Confidential information or Attorney's Eyes Only information.

6. In the event that a Producing Party inadvertently fails to designate any Discovery Material as Confidential information or Attorney's Eyes Only information, that material shall nonetheless, be treated as Confidential information or Attorney's Eyes Only information provided the Producing Party provides written notice to the Receiving Party, as soon as practicable, designating the material as Confidential information or Attorney's Eyes Only information. Upon receipt of such written notice, the Receiving Party shall treat the designated material as Confidential information or Attorney's Eyes Only information and shall stamp or mark it accordingly, or if the Producing Party provides correctly designated copies of the material, destroy the erroneously designated material or return it to the Producing Party.

7. Any party may dispute the designation of Discovery Material as Confidential information or Attorney's Eyes Only information by setting forth the grounds for such dispute in writing to the Producing Party. After receiving such a written notification, the Producing Party shall be required to move the court for an order preserving and shall bear the burden of establishing the propriety of the designated status within ten (10) days of receipt of the written notification, and failure to do so shall constitute termination of the restricted status of the information. However, not withstanding anything to the contrary herein, no failure to promptly move to un-designate or re-designate discovery material shall waive or compromise a motion, provided such motion is made during the discovery period in this case.

8. Counsel for the Receiving Party shall not disclose or permit disclosure of Confidential information to any other person or entity, except:

a. the Receiving Party, including its owners and employees, provided that any such employee provide the Producing Party with a signed Acknowledgment to be Bound by Protective Order attached hereto as Exhibit A;

b. counsel for the Receiving Party and employees of such counsel;

c. consultants or experts employed or retained by the Receiving Party to assist counsel in this litigation and their employees or support staff, to the extent reasonably necessary to provide such assistance, provided that such consultant or expert, or any of their employees or support staff, is not a present or former employee, officer or director of a party to this litigation;

d. any person called to testify under oath by the Receiving Party in connection with this litigation, during their testimony, provided they do not retain copies of such documents;

e. a court reporter at a deposition; or

f. the Court and any Judge, clerk or court employee with responsibility over any aspect of this litigation, provided that such disclosure complies with the below Paragraph 12 of this Protective Order.

9. Counsel for the Receiving Party shall not disclose or permit disclosure of Attorney's Eyes Only information to any other person or entity, except:

a. counsel of record for the Receiving Party;

b. employees of counsel of record for the Receiving Party to the extent reasonably necessary for the conduct of this litigation;

c. consultants or experts employed or retained by the Receiving Party to assist counsel in this litigation, and their employees or support staff, to the extent reasonably necessary to provide such assistance, provided that such consultant or expert, or their employees or support staff is not a present or former employee, officer or director of a party to this litigation;

d. any person called to testify under oath by the Receiving Party in connection with this litigation, during their testimony, provided they do not retain copies of such documents;

e. a court reporter at a deposition; or

f. the Court and any Judge, clerk or court employee with responsibility over any aspect of this litigation, provided that such disclosure complies with Paragraph 12 of this Protective Order.

10. If any party to this action is unrepresented by counsel (the "*Pro Se* Party"), as a result of an Order issued by this Court, the *Pro Se* party will be permitted to receive and review documents designated Attorney's Eyes Only but must strictly maintain the confidentiality of such information and may use the information solely for preparing his or her case in this litigation, and cannot use Attorney's Eyes Only information competitively or in furtherance of any business, proprietary, or commercial purpose or any other purpose beyond this litigation or inconsistent with the terms of this Order. Violation of this provision may result in the imposition of sanctions by the Court.

11. No information may be disclosed to any person in accordance with subsections (c), (d), or (e) of Paragraph 8; or subsections (c), (d), or (e) of Paragraph 9 of this Protective Order, unless such person has agreed to be bound by the terms of this Protective Order by signing the Confidentiality Agreement attached hereto as Exhibit A.

12. A Receiving Party that files Confidential information or Attorney's Eyes Only information with the Court (including pleadings, memoranda, or other documents that quote or summarize such information) must make such filing under seal and with a designation that, in substance, states, "CONFIDENTIAL INFORMATION – Subject to Protective Order; Filed

Under Seal," or "ATTORNEY'S EYES ONLY INFORMATION– Subject to Protective Order; Filed Under Seal," as appropriate.

13. If any Confidential information or Attorney's Eyes Only information is disclosed to any person other than as permitted in Paragraphs 8 or 9 of this Protective Order, the party responsible for the disclosure shall, upon discovery of the disclosure, immediately inform the Producing Party whose information is disclosed of all pertinent facts relating to the disclosure, including the name, address and employer of the person to whom the disclosure was made. The party responsible for the disclosure shall take all reasonable steps to prevent any further disclosure of the Confidential information or Attorney's Eyes Only information.

14. Within thirty (30) days of the conclusion of this litigation, including any appeals, each party shall, through its counsel of record, provide written confirmation to the Producing Party that the Receiving Party has destroyed or returned any and all Confidential information or Attorney's Eyes Only information, provided that counsel of record for each party may keep a copy of all pleadings and correspondence in this litigation and any attorney work-product on the condition that all retained Confidential information or Attorney's Eyes Only information shall be treated in accordance with the terms of this Protective Order.

15. Nothing in this Order shall be construed to limit a Producing Party's use or disclosure of its own materials.

16. If Discovery Material is inadvertently produced that is subject to a claim of privilege or of protection as attorney work product or trial-preparation material and the Producing Party notifies the Receiving Party of the claim and the bases for it, (a) such disclosure shall be without prejudice to any claim of privilege or protection; (b) such production shall not be considered to constitute any waiver of any claim or privilege or protection; (c) the Receiving

Party shall promptly return or destroy the material in question and any copies. If the Receiving Party in good faith disputes the claim of privilege or protection, the Receiving Party may retain one copy of the disputed material, provided it promptly presents the information to the Court under seal for a resolution of the claim. If a Receiving Party disclosed the information before being notified, it must take reasonable steps to retrieve it. The Producing Party must preserve the information until the claim is resolved.

17. Nothing in this Protective Order shall prevent any attorney from conveying to any party client his or her evaluation in a general way of CONFIDENTIAL or ATTORNEY'S EYES ONLY information produced or exchanged; provided, however, that in rendering such advice and otherwise communicating with his or her client, the attorney shall not disclose the specific contents of any such information in a manner that would be contrary to the terms of this Protective Order.

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and	§	
RIN TIN INCORPORATED,	§	
	§	
Plaintiffs / Counterdefendants,	§	
	§	
v.	§	**CIVIL ACTION NO. 9:15-CV-026-KFG**
	§	
KATHY CARLTON,	§	
TERRY "T.C." CARLTON	§	**JURY TRIAL REQUESTED**
CAROL RIGGINS and	§	
CHELSEA RIGGINS,	§	
	§	
Defendants / Counterplaintiffs.	§	

AGREEMENT TO BE BOUND BY PROTECITVE ORDER

I have read the Agreed Protective Order in the above-captioned action. I understand its terms and agree to be fully bound by them, and I hereby submit to the jurisdiction of the United States District Court for the Eastern District of Texas for purposes of enforcement of the Stipulated Confidentiality and Protective Order. I further agree not to disclose any Discovery Material, including Confidential or Attorney's Eyes Only information, as those terms are defined in the Agreed Protective Order, except as expressly permitted by the Agreed Protective Order.

[Signature on following page.]

_____

Signature

_____

Name

_____

Affiliation

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and RIN TIN INCORPORATED	§	
	§	
Plaintiffs / Counterdefendants,	§	
v.	§	
	§	
KATHY CARLTON, TERRY "T.C." CARLTON, CAROL RIGGINS and CHELSEA RIGGINS	§	
	§	
Defendants / Counterplaintiffs.	§	
~~**AND**~~	~~§~~	
~~**CAROL RIGGINS and CHELSEA RIGGINS**~~	~~§~~	
~~***Counterplaintiffs***~~	~~§~~	**CASE NO: 9:15-CV-00026-KFG~~MHS~~**
~~**v.**~~	~~§~~	
~~**DAPHNE HEREFORD, Individually, and as Founder and Volunteer for A RINTY FOR KIDS FOUNDATION, INCORPORATED; and A RINTY FOR KIDS FOUNDATION, INCORPORATED**~~	~~§~~	**JURY TRIAL REQUESTED**
~~***Counterdefendants***~~	~~§~~	
~~**AND**~~	~~§~~	
~~**KATHY CARLTON TERRY "T.C." CARLTON, CAROL RIGGINS and CHELSEA RIGGINS**~~	~~§~~	
~~***Counterplaintiffs***~~	~~§~~	
~~**v.**~~	~~§~~	

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~~DAPHNE HEREFORD, Individually, and as President and Director of RIN TIN, INCORPORATED; and RIN TIN, INCORPORATED~~ §
§
§
§
§
§

~~*Counterdefendants*~~

AGREED PROTECTIVE ORDER

Upon agreement of the parties and good cause appearing therefor,

IT IS HEREBY ORDERED THAT, the following procedures shall govern discovery of confidential information and documents produced or disclosed by the parties ("Discovery Material") in this litigation:

1. "Confidential" information refers to Discovery Material that the Producing Party in good faith regards as confidential or proprietary information that it would not ordinarily disclose, as well as any copies or summaries of such information or any material that reveal the contents of such information.

2. "Attorney's Eyes Only" information refers to Discovery Material that the Producing Party in good faith regards as confidential or proprietary information that is particularly sensitive, as well as any copies or summaries of such information or materials that otherwise reveal the contents of such information and includes:

a. proprietary technical information and specifications;

b. trade secrets; and

c. any other information the disclosure of which is likely to cause substantial competitive harm to the Producing Party or to any third-party.

3. All or any portion of any Discovery Material may be designated as Confidential information or Attorney's Eyes Only information provided such designation is made in good faith and once designated, such material shall be treated as Confidential information or Attorney's Eyes Only information, as appropriate, under the terms of this Protective Order until such designation is withdrawn by the Producing Party, by an Order of this Court, or as set forth in this Agreed Protective Order.

4. Documents may be designated as Confidential information by placing a stamp on each page that reads, "CONFIDENTIAL." Documents may be designated as Attorney's Eyes Only information by placing a stamp on each page that reads, "ATTORNEY'S EYES ONLY." Electronically stored information may be designated as Confidential information by placing a mark that reads, "CONFIDENTIAL" on the information or media containing the information that is sought to be protected. Electronically stored information may be designated as Attorney's Eyes Only information by placing a mark that reads, "ATTORNEY'S EYES ONLY" on the information or media containing the information that is sought to be protected.

5. Responses to Interrogatories, Requests for Production of documents, information or things and Requests for Admission, may be designated as Confidential information or Attorney's Eyes Only information by placing the legend, "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," as appropriate, on the first page of such document and on any pages that contain Confidential information or Attorney's Eyes Only information.

6. In the event that a Producing Party inadvertently fails to designate any Discovery Material as Confidential information or Attorney's Eyes Only information, that material shall nonetheless, be treated as Confidential information or Attorney's Eyes Only information provided the Producing Party provides written notice to the Receiving Party, as soon as

practicable, designating the material as Confidential information or Attorney's Eyes Only information. Upon receipt of such written notice, the Receiving Party shall treat the designated material as Confidential information or Attorney's Eyes Only information and shall stamp or mark it accordingly, or if the Producing Party provides correctly designated copies of the material, destroy the erroneously designated material or return it to the Producing Party.

7. Any party may dispute the designation of Discovery Material as Confidential information or Attorney's Eyes Only information by setting forth the grounds for such dispute in writing to the Producing Party. After receiving such a written notification, the Producing Party shall be required to move the court for an order preserving and shall bear the burden of establishing the propriety of the designated status within ten (10) days of receipt of the written notification, and failure to do so shall constitute termination of the restricted status of the information. However, not withstanding anything to the contrary herein, no failure to promptly move to un-designate or re-designate discovery material shall waive or compromise a motion, provided such motion is made during the discovery period in this case.

8. Counsel for the Receiving Party shall not disclose or permit disclosure of Confidential information to any other person or entity, except:

a. the Receiving Party, including its owners and employees, provided that any such employee provide the Producing Party with a signed Acknowledgment to be Bound by Protective Order attached hereto as Exhibit A-;

b. counsel for the Receiving Party and employees of such counsel;

c. consultants or experts employed or retained by the Receiving Party to assist counsel in this litigation and their employees or support staff, to the extent reasonably necessary to provide such assistance, provided that such consultant or

expert, or any of their employees or support staff, is not a present or former employee, officer or director of a party to this litigation;

d. any person called to testify under oath by the Receiving Party in connection with this litigation, during their testimony, provided they do not retain copies of such documents;

e. a court reporter at a deposition; or

f. the Court and any Judge, clerk or court employee with responsibility over any aspect of this litigation, provided that such disclosure complies with the below Paragraph 12~~4~~ of this Protective Order.

9. Counsel for the Receiving Party shall not disclose or permit disclosure of Attorney's Eyes Only information to any other person or entity, except:

a. counsel of record for the Receiving Party;

b. employees of counsel of record for the Receiving Party to the extent reasonably necessary for the conduct of this litigation;

c. consultants or experts employed or retained by the Receiving Party to assist counsel in this litigation, and their employees or support staff, to the extent reasonably necessary to provide such assistance, provided that such consultant or expert, or their employees or support staff is not a present or former employee, officer or director of a party to this litigation;

d. any person called to testify under oath by the Receiving Party in connection with this litigation, during their testimony, provided they do not retain copies of such documents;

e. a court reporter at a deposition; or

f. the Court and any Judge, clerk or court employee with responsibility over any aspect of this litigation, provided that such disclosure complies with Paragraph 12~~4~~ of this Protective Order.

~~f.~~ 10. If any party to this action is unrepresented by counsel (the "*Pro Se* Party"), as a result of an Order issued by this Court, the *Pro Se* party will be permitted to receive and review documents designated Attorney's Eyes Only but must strictly maintain the confidentiality of such information and may use the information solely for preparing his or her case in this litigation, and cannot use Attorney's Eyes Only information competitively or in furtherance of any business, proprietary, or commercial purpose or any other purpose beyond this litigation or inconsistent with the terms of this Order. Violation of this provision may result in the imposition of sanctions by the Court.

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11~~0~~. No information may be disclosed to any person in accordance with subsections (c), (d), or (e) of Paragraph 8~~11~~; or subsections (c), (d), or (e) of Paragraph 9~~12~~ of this Protective Order, unless such person has agreed to be bound by the terms of this Protective Order by signing the Confidentiality Agreement attached hereto as Exhibit A.

12~~1~~. A Receiving Party that files Confidential information or Attorney's Eyes Only information with the Court (including pleadings, memoranda, or other documents that quote or summarize such information) must make such filing under seal and with a designation that, in substance, states, "CONFIDENTIAL INFORMATION – Subject to Protective Order; Filed Under Seal," or "ATTORNEY'S EYES ONLY INFORMATION– Subject to Protective Order; Filed Under Seal," as appropriate.

13~~2~~. If any Confidential information or Attorney's Eyes Only information is disclosed to any person other than as permitted in Paragraphs 8~~11~~ or 9~~12~~ of this Protective Order, the party

responsible for the disclosure shall, upon discovery of the disclosure, immediately inform the Producing Party whose information is disclosed of all pertinent facts relating to the disclosure, including the name, address and employer of the person to whom the disclosure was made. The party responsible for the disclosure shall take all reasonable steps to prevent any further disclosure of the Confidential information or Attorney's Eyes Only information.

14~~3~~. Within thirty (30) days of the conclusion of this litigation, including any appeals, each party shall, through its counsel of record, provide written confirmation to the Producing Party that the Receiving Party has destroyed or returned any and all Confidential information or Attorney's Eyes Only information, provided that counsel of record for each party may keep a copy of all pleadings and correspondence in this litigation and any attorney work-product on the condition that all retained Confidential information or Attorney's Eyes Only information shall be treated in accordance with the terms of this Protective Order.

15~~4~~. Nothing in this Order shall be construed to limit a Producing Party's use or disclosure of its own materials.

16~~5~~. If Discovery Material is inadvertently produced that is subject to a claim of privilege or of protection as attorney work product or trial-preparation material and the Producing Party notifies the Receiving Party of the claim and the bases for it, (a) such disclosure shall be without prejudice to any claim of privilege or protection; (b) such production shall not be considered to constitute any waiver of any claim or privilege or protection; (c) the Receiving Party shall promptly return or destroy the material in question and any copies. If the Receiving Party in good faith disputes the claim of privilege or protection, the Receiving Party may retain one copy of the disputed material, provided it promptly presents the information to the Court under seal for a resolution of the claim. If a Receiving Party disclosed the information before

being notified, it must take reasonable steps to retrieve it. The Producing Party must preserve the information until the claim is resolved.

17~~6~~. Nothing in this Protective Order shall prevent any attorney from conveying to any party client his or her evaluation in a general way of CONFIDENTIAL or ATTORNEY'S EYES ONLY information produced or exchanged; provided, however, that in rendering such advice and otherwise communicating with his or her client, the attorney shall not disclose the specific contents of any such information in a manner that would be contrary to the terms of this Protective Order.

~~DATED this _____ day of _____ 2016.~~

~~_____~~

~~PRESIDING JUDGE~~

Agreed and Respectfully submitted,

By /s/ Wendy B. Mills

Wendy B. Mills
Texas Bar No. 24032861
WB Mills, PLLC
3102 Maple Avenue
Suite 400
Dallas, TX 75201
Telephone: (214) 969-5995
Facsimile: (214) 764-7600
Email: wbm@wbmillslaw.com
Attorney for Defendants and Counterplaintiffs - Kathy Carlton, Terry "T.C." Carlton, Carol Riggins and Chelsea Riggins

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Agreed and Respectfully submitted,

By:

Daniel A. Noteware, Jr.
State Bar. No. 24051123
POTTER MINTON
A Professional Corporation
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ATTORNEYS FOR COUNTERDEFENDANTS

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and	§	
RIN TIN INCORPORATED,	§	
	§	
Plaintiffs / Counterdefendants,	§	
	§	
v.	§	**CIVIL ACTION NO. 9:15-CV-026-KFG**
	§	
KATHY CARLTON,	§	
TERRY "T.C." CARLTON	§	**JURY TRIAL REQUESTED**
CAROL RIGGINS and	§	
CHELSEA RIGGINS,	§	
	§	
Defendants / Counterplaintiffs.	§	

AGREEMENT TO BE BOUND BY PROTECITVE ORDER

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I have read the Agreed Protective Order in the above-captioned action. I understand its terms and agree to be fully bound by them, and I hereby submit to the jurisdiction of the United States District Court for the Eastern District of Texas for purposes of enforcement of the Stipulated Confidentiality and Protective Order. I further agree not to disclose any Discovery Material, including Confidential or Attorney's Eyes Only information, as those terms are defined in the Agreed Protective Order, except as expressly permitted by the Agreed Protective Order.

[Signature on following page.]

Signature

Name

Affiliation

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAPHNE HEREFORD, and RIN TIN INCORPORATED,	§	
Plaintiffs,	§	**CIVIL ACTION NO. 9:15-CV-026-KFG**
v.	§	
KATHY CARLTON, TERRY "T.C." CARLTON CAROL RIGGINS and CHELSEA RIGGINS,	§	**JURY TRIAL REQUESTED**
Defendants.	§	

ORDER DENYING COUNTERPLAINTIFFS' MOTION TO ENTER PROTECTIVE ORDER

On this day came for consideration Counterplaintiffs Kathy Carlton, Terry "T.C." Carlton, Carol Riggins, and Chelsea Riggins' Motion to Enter Protective Order (Dkt. 51). Having considered the motion, briefing, and supporting materials, it is the Court's opinion that same should be DENIED. It is therefore,

ORDERED that Counterplaintiffs' Motion to Enter Protective Order is denied and the parties are directed to submit a final version of Counterdefendants' proposed one-tier protective order for the Court's consideration.

Proof of Delivery

I hereby certify that on Friday, July 19, 2024, I provided a true and correct copy of the Ex. E_Hereford v. Carlton, Counter Defs' Response to the following:

The National Association of Broadcasters, represented by Joseph R. Wetzel, served via E-Service at joe.wetzel@lw.com

National Religious Broadcasters Music License Committee, represented by Karyn K Ablin, served via E-Service at ablin@fhhlaw.com

College Broadcasters, Inc., represented by Seth D. Greenstein, served via E-Service at sgreenstein@constantinecannon.com

Educational Media Foundation, represented by Keenan P Adamchak, served via E-Service at kadamchak@wbklaw.com

George Johnson dba Geo Music, represented by George D Johnson, served via E-Service at george@georgejohnson.com

Word Collections, Inc., represented by Eric B Goldberg, served via E-Service at eric@wordcollections.com

Sirius XM Radio Inc./Pandora Media, LLC, represented by Todd Larson, served via E-Service at todd.larson@weil.com

Public Broadcasting Entities, represented by David P Mattern, served via E-Service at dmattern@kslaw.com

Signed: /s/ Scott Edelman