

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

In re: YAMAHA MOTOR CORP. RHINO
ATV PRODUCTS LIABILITY
LITIGATION

This document relates to:

ALL ACTIONS

Judge Jennifer B. Coffman

MASTER FILE NO. 2009-md-2016

MDL No. 2016

**STIPULATION AND AGREED PROTECTIVE ORDER
REGARDING THE CONFIDENTIALITY OF DOCUMENTS AND MATERIALS**

Pursuant to Federal Rules of Civil Procedure, Rule 26, the parties subject to discovery in connection with the above-captioned action agree to, and the Court enters, the following Stipulation and Protective Order (also referred to herein as the “Order”) to facilitate the exchange of discoverable information and, in particular, the production of documents, the service of discovery responses, and the taking of testimony under the Federal Rules of Civil Procedure. Unless modified pursuant to the terms contained in this Order, this Order shall remain in effect.

A. WHEREAS documents or information containing confidential or proprietary business information and/or trade secrets (“Confidential Information”) that bear significantly on the claims or defenses of the parties are likely to be disclosed or produced during the course of discovery in this litigation;

B. WHEREAS the parties subject to discovery assert that public dissemination and disclosure of Confidential Information could severely injure or damage the party producing

Confidential Information (hereinafter the “Producing Party”) and could place the Producing Party at a competitive disadvantage or subject them to annoyance, embarrassment, oppression, or undue burden;

C. WHEREAS public dissemination and disclosure of Confidential Information of third parties subject to discovery, including but not limited to Yamaha’s vendors and/or suppliers who are not parties to this action, could severely injure or damage those third parties, and would place them at a competitive disadvantage; and

D. WHEREAS entry of an order controlling access to and dissemination of Confidential Information will protect the respective interests of the parties and facilitate the progress of disclosure and discovery in this case;

IT IS HEREBY STIPULATED AND ORDERED:

1. This Order applies to all parties and non-parties subject to discovery in the above-captioned litigation, and the litigation captioned on any signed Exhibits, including but not limited to Yamaha’s vendors and suppliers. The individual or entity producing documents or information subject to this Order is deemed the “Producing Party” and all parties receiving documents or information subject to this Order are deemed the “Receiving Party or Parties.”

2. Federal Rules of Civil Procedure, Rule 26(c)(1) and the Health Insurance Portability and Accountability Act (“HIPAA”) will control the definition of Confidential Information and determination of whether such information may be deemed confidential, said Rule and Act contemplating that Confidential Information will include “trade secrets or other confidential research, development or commercial information” and confidential personal information including individual medical, tax, social security and other sensitive financial information. Documents, discovery responses, and deposition testimony containing Confidential

Information produced, served or given by the parties subject to discovery in this litigation are referred to as "Protected Documents." Except as otherwise indicated below, all documents, discovery responses, or deposition testimony stamped by the Producing Party "Confidential" upon production are Protected Documents and are entitled to confidential treatment as described below. Any document that summarizes, paraphrases, or quotes from the content of a Protected Document shall itself be deemed a Protected Document, regardless of whether the document is stamped "Confidential," and is entitled to confidential treatment as described below. If a party wishes to reveal any statement in any record relating to facts of the incident from which plaintiff(s)' injuries arose, including but not limited to the circumstance of the incident, the use of safety gear and the impairment of the plaintiff at the time of the incident they must: 1) first notify the party asserting the confidentiality of the record containing the statement of the requesting party's intention to reveal the information or statement; 2) wait ten (10) days after giving such notification during which time the party asserting confidentiality may object and request an order from the Court declaring that the statement is entitled to protection under this Order, and 3) if after the expiration of ten (10) days the party asserting confidentiality does not object and request protection from the Court, then the statements relating to facts of the incident are not entitled to confidential treatment .

3. Plaintiffs' personal records, including medical, social security, tax, employment, school or other sensitive documents, whether stamped confidential subject to protective order or produced in the context of confidential settlement discussions either by counsel or pursuant to written authorizations are designated as confidential and are Protected Documents for purposes of this Order.

4. At any time after the delivery of Protected Documents and up until 60 days before trial of the individual case captioned on the Exhibits executed herein, or 30 days after the last production, whichever is later, counsel for the party or parties receiving the Protected Documents may challenge the confidential designation of all or any portion thereof by providing written notice thereof to all other counsel of record, as well as to the Producing Party in the case or cases in which the Protected Documents are produced. If after reasonable and good faith efforts, the parties are unable to agree as to whether the confidential designation of Protected Documents is appropriate, the party or parties receiving the Protected Documents shall certify to the Court that the parties cannot reach an agreement as to the confidential nature of all or a portion of the Protected Documents. Thereafter, the party seeking confidential treatment shall have thirty (30) days from the date of certification to file a motion for protective order with regard to any Protected Documents in dispute. Nothing in this order shall prevent other parties from moving for a determination with respect to the challenged designations before the 30 days has elapsed. In either event, the party seeking confidential treatment shall have the burden of establishing that the disputed Protected Documents are entitled to confidential treatment. All Protected Documents are entitled to confidential treatment pursuant to the terms of this Order until and unless the parties formally agree in writing to the contrary, or the party seeking confidential treatment fails to move to protect the challenged Protected Documents within the prescribed time, or a contrary determination is made by the Court as to whether all or a portion of a Protected Document is entitled to confidential treatment. If the party seeking confidential treatment moves for protection and does not prevail, it shall have fifteen (15) days after entry of the order to seek expedited appellate relief, and provided that such appellate review is sought, the

disputed documents shall be treated as Protected Documents until the appeal process is exhausted.

5. Protected Documents and Confidential Information shall not be used or shown, disseminated, copied, or in any way communicated to anyone for any purpose whatsoever, except as provided for below, and except that where the Protected Documents or Confidential Information are otherwise made public by means not in violation of this Order, the Receiving Party shall notify the Producing Party of the disclosure and seek agreement that the item is no longer protected under this Order. If the Producing Party agrees or does not respond within 10 days, the document or information shall no longer be deemed protected or confidential under this Order. Otherwise, the Producing Party shall be required to file a motion for protective order under the procedure set forth in Paragraph 4 for the resolution of confidential designations, or if a motion for protective order or to seal has been filed in the action in which the Protected Documents or Confidential Information were disclosed, the material will still be subject to this Order until such time as that motion is resolved and any appeals are exhausted.

6. Protected Documents and Confidential Information shall be disclosed only to the following persons ("Qualified Persons"):

- (a) Counsel in this action for the party or parties receiving Protected Documents or Confidential Information, and counsel for other plaintiffs who have filed an action pending in or transferred to MDL 2016;
- (b) Employees or agents of such counsel assigned to and necessary to assist such counsel in the preparation and trial of this action;
- (c) Retained third party vendors (including court reporters) of such counsel necessary to assist such counsel in this action;

- (d) Retained experts disclosed pursuant to FRCP, Rule 26, or other similar state court rule, (including persons working for such experts) of the party or parties receiving Protected Documents (“Retained Experts”) to the extent necessary to perform their work in connection with this case; however, if the Retained Expert (or any person working for them) is a competitor of the Yamaha Defendants as defined on the attached agreed or Court-approved list, notice shall be given to counsel for Yamaha twenty (20) days prior to disclosure which shall include: (1) the name of the competitor, and (2) the proposed subject matter on which they are being consulted. The Yamaha Defendants shall have the right to object to such disclosure within 20 days of being provided notice. No disclosure shall be made until the objection is resolved by agreement or court order. This notice requirement does not apply to Yamaha’s disclosure of their own Protected Documents;
- (e) Consulting experts not disclosed pursuant to FRCP, Rule 26, or other similar rule (“Consulting Experts”); however, if the Consulting Expert (or persons working for them) is a competitor of the Yamaha Defendants as defined on the attached agreed or Court-approved list, notice shall be given to counsel for Yamaha twenty (20) days prior to disclosure which shall include: (1) the name of the competitor, and (2) the proposed subject matter on which they are being consulted. The Yamaha Defendants shall have the right to object to such disclosure within 20 days of being provided notice. No disclosure shall be made until the objection is

resolved by agreement or court order. This notice requirement does not apply to Yamaha's disclosure of their own Protected Documents;

- (f) The Court, Court personnel, and any Special Masters and/or Mediators appointed by the Court, under seal;
- (g) Plaintiffs, so long as they remain represented by counsel of record in this action;
- (h) Witnesses during the course of a deposition in this action, but only if reasonably related to the questions posed and only within the scope of discovery permitted in this action; and
- (i) Actual or potential witnesses and authors or recipients only after: 1) the Receiving Party obtains an executed agreement in writing in the form attached hereto as Exhibit A from the actual or potential witness, author or recipient, as set forth in paragraph 7 below; 2) the Receiving Party provides the executed Exhibit A to the party asserting confidentiality, and waits ten (10) days after the provision of Exhibit A during which time the party asserting confidentiality may object and seek an order of protection from the Court to prevent disclosure, and 3) if, after the expiration of ten (10) days the party asserting confidentiality does not object and seek protection from the Court, the Receiving Party may show the Protected Documents to the individual who signed Exhibit A. By signing this Order, the Yamaha defendants are not agreeing to change Yamaha policies, procedures and instructions to current or former employees regarding the handling of Yamaha's confidential documents and information, nor does

Yamaha waive any prohibitions, restrictions or remedies of any applicable ethics rules or codes or applicable law regarding contact with former or current employees of Yamaha.

Protected Documents and any information contained therein shall be used solely for use and in connection with the actions captioned on any signed Exhibits, except that Counsel for Plaintiff may use Protected Documents in any other non-MDL 2016 litigation filed by Counsel for Plaintiff against Yamaha after first providing notice to Yamaha of the intent to use the Protected Documents in any specifically identified lawsuit.

7. Before the persons described in 6(c), (d), (e), (g), (h) and (i) above are given access to Protected Documents, each person to whom a Receiving Party or its representatives intend to deliver, exhibit, or disclose any of the Protected Documents or Confidential Information shall be advised of the terms of this Order, shall be given a copy of this Order, and shall agree in writing, in the form attached hereto as **Exhibit A**, to be bound by its terms.

8. The term “copy” as used herein means any photographic, mechanical, electronic or computerized copy or reproduction of any document or thing, including, but not limited to, any electronic, photographic or computerized copy, or any transcript, in whole or in part, of such document or thing.

9. Should a party desire to file with the court a Protected Document or any other submission, e.g., pleading, motion, brief, or affidavit that contains Confidential Information, the Protected Document and Confidential Information shall be sealed by the terms of this Stipulation and Protective Order and access to such materials shall be limited to those persons described in Paragraph 5 above. Any filing shall be filed in a sealed container or

envelope endorsed with the title of this action and the words “Confidential-Subject to Protective Order.” The use of Protected Documents or Confidential Information in pleadings or other court submissions does not waive the provisions of this Protective Order.

10. The parties subject to this Order contemplate that the procedures for the treatment and use of Protected Documents and Confidential Information at trial will be addressed in a separate order, if necessary. By entering this Stipulation and Agreed Order, no party waives its right to assert that Protected Documents and Confidential Information should or should not receive special protection at trial.

11. Any Protected Documents attached as an exhibit to any deposition taken in this action and any portion of deposition testimony containing information from or referring to Protected Documents shall be sealed and protected from disclosure by this Protective Order if it is designated as by the Producing Party as prescribed herein. The use of Protected Documents during depositions in this action does not waive the terms of this Protective Order.

12. Any court reporter or transcriber or videographer who reports, transcribes or otherwise records deposition testimony in this action shall agree that all Confidential Information designated as such under this Order shall remain confidential and shall not be disclosed by them, except pursuant to the terms of this Order, and that any notes or transcriptions of such testimony (and any accompanying exhibits) will be retained by the reporter or delivered to counsel of record. Deposition testimony referring to Confidential Information may be designated as “Confidential” and protected as provided for herein, by written designations of page and line numbers to all counsel of record in the case or cases in which the Confidential Information is produced and the court reporter. Designations of deposition testimony and exhibits as Protected Documents shall be made within thirty (30) days after the final transcript

has been received by counsel making the designation. Until such 30 day period expires, the entire deposition transcript and all exhibits shall be treated as Protected Documents unless otherwise agreed by the parties or ordered by the Court.

13. During portions of depositions at which Protected Documents are used or Confidential Information is revealed, persons, other than court reporters, videographers or transcribers, who are not entitled to access to the Protected Documents or Confidential Information covered by this Protective Order shall be excluded.

14. The Receiving Party or Parties shall not under any circumstances sell, offer for sale, advertise, or publicize Protected Documents or Confidential Information.

15. An individual or entity who receives a request or subpoena for the production or disclosure of Protected Documents or Confidential Information under the terms of this Order shall, within three (3) business days, give counsel for the Producing Party written notice (via both facsimile and U.S. mail) of the request or subpoena and forward a copy of the request or subpoena. No Protected Documents or Confidential Information shall be produced until the party whose Protected Documents or Confidential Information are the subject of the subpoena or request (i.e. the Producing Party) has received a copy of the request or subpoena and has ten (10) days in which to file a motion for relief. If the Producing Party makes a motion or other application for relief from the subpoena or other request in the appropriate forum, the party who received such materials shall not produce or disclose the requested information without consent of the Producing Party or until ordered to do so by a court of competent jurisdiction.

16. If a party that receives Protected Documents or Confidential Information discovers that, whether through inadvertence or otherwise, it has disclosed or provided Protected Documents or Confidential Information to any person or entity not authorized to review it under

the terms of this Protective Order, then that party shall promptly: (a) make reasonable best efforts to seek the return of the documents or information; (b) inform the Producing Party of the disclosure and the relevant circumstances (including the identity(ies) of the person or entity to whom disclosure was made); and (c) advise the recipient of the provisions of this Order and request that they agree to its terms in writing by signing the certification attached as Exhibit A. This paragraph does not limit the remedies that the Producing Party may pursue for breach of this Protective Order.

17. This Protective Order does not authorize or require disclosure of documents or information protected by or subject to claims of privilege or protection, including, but not limited to, the attorney-client privilege, work-product protection, and joint defense or common interest privilege.

18. Inadvertent or unintentional production of documents or information containing Confidential Information which is not designated "Confidential" shall not be deemed a waiver in whole or in part of a claim for confidential treatment to the extent notice of the inadvertent or unintentional production is provided to the Receiving Party within a reasonable time under the circumstances.

19. If a party inadvertently produces documents or information subject to a claim of privilege or work product protection, such production will not waive otherwise applicable claims of privilege or work product protection to the extent provided for under Federal Rule of Evidence 502(b). Upon discovery by the receiving party, or receipt of written notice from the Producing Party identifying privileged or Protected Documents that were inadvertently produced, the receiving party shall within seven (7) business days: either (a) return or certify the destruction of all such documents, all copies, and any work product or portions of

any work product containing or reflecting the contents of the subject materials; or (b) after attempting to resolve any dispute with opposing counsel informally, file a motion challenging the assertion of privilege and tender the subject documents for *in camera* review with the motion. The moving party shall do nothing to compromise the privilege claim until the Court rules on said motion and the opportunity for appellate review is exhausted or the issue is otherwise resolved.

20. After termination of this litigation, the provisions of this Order shall continue to be binding. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Documents for enforcement of the provisions of this Order following termination of this litigation.

21. At the conclusion of the work of the Retained Experts and the Consulting Experts, all Protected Documents and all reports, reliance materials, copies, prints, negatives, notes, information derived therefrom, and summaries thereof shall be returned to the attorneys who retained the Retained Experts and Consulting Experts and who were provided access to the Protected Documents and Confidential Information. At the time of the return, an Affidavit in the form of **Exhibit B** attached hereto, shall be executed by the Retained Experts and Consulting Experts who have had access to the Protected Documents and Confidential Information, stating that they have complied with the provisions of this Protective Order. Such Affidavit shall be returned to the attorneys who provided access to the Protected Documents and Confidential Information and shall be maintained by them. Upon completion of the trial and any appeals in this each individual action in MDL 2016 and the satisfaction of any judgment, or upon the conclusion of any settlement, the parties receiving the Protected Documents pursuant to this Protective Order shall provide to counsel for the Producing Party all Protected Documents

produced under the terms of this Protective Order, except where Counsel for Plaintiff represents plaintiff(s) in (an) other lawsuit(s) pending in MDL 2016 or in non-MDL action identified pursuant to Paragraph 6 under which circumstances, counsel for Plaintiff can retain the Protected Documents for use in such other lawsuits. The parties receiving the Protected Documents pursuant to this Protective Order shall further provide to counsel for the Producing Party at such time of re-delivery an Affidavit in the form of **Exhibit B** attached hereto representing compliance, as outlined herein, with the terms of this Protective Order and all Affidavits received by such parties from Retained Experts pursuant to this paragraph. Exhibit B affidavits received from Consulting Experts will be filed under seal with the court within 30 days of the termination of the litigation. On a showing of good cause of a potential violation of this Order, the Producing Party may seek access to Exhibit **B** affidavits from Consulting Experts. The showing of good cause must be upon application to this Court with notice to all parties to the relevant action.

22. Counsel for Plaintiffs may share Protected Documents produced pursuant to this Protective Order with other attorneys representing other Plaintiffs alleged to be injured by a Yamaha Rhino in other lawsuits not pending in or transferred to MDL 2016 in the following manner:

- (a) Counsel will obtain a signed certification, in a form attached as **Exhibit C**, from such other attorneys representing the other Plaintiffs alleged to be injured by a Yamaha Rhino in another lawsuit.
- (b) Upon receipt of any signed certification described above, Plaintiffs' counsel shall forward same by first class mail to counsel for Yamaha.
- (c) If there is no protective order entered in the case pursued by such other

attorney, Plaintiffs' counsel shall not release the materials covered by this Protective Order until the 30th calendar day following the mailing of the signed certification pursuant to paragraph 22(b) above, unless counsel for Yamaha provides notice to counsel for Plaintiffs that it has filed a motion in the other lawsuit to have the Protected Documents produced pursuant to a protective order in that other lawsuit. Counsel for Yamaha shall have the right to object for good cause to the sharing or production of the Protected Documents to other Plaintiffs' attorneys Plaintiffs' counsel within the 30 day period. If such good cause objection is filed, Plaintiffs' counsel shall not release the materials covered by this Protective Order until the objection is resolved by agreement or court order.

- (d) If there is a protective order entered in the case pursued by such other attorney, Plaintiffs' counsel may share any Protected Documents and Protected Information contained therein with such other attorney starting the same day that Plaintiffs' counsel forwards the fully executed **Exhibit C** to counsel for Yamaha and Protected Documents sent to such other attorney will be treated as if covered by the protective order entered in the case identified in Exhibit A.

23. This Order shall be binding upon the parties and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

24. Upon entry of this Order, all other stipulations and/or protective orders regarding the confidentiality of documents and materials previously entered in any case currently pending before MDL 2016 are vacated. No document, or information contained therein, marked or treated as confidential under a prior order shall lose its confidential status or treatment as a result of entry of this Order, but shall instead be treated as confidential hereunder. Existing confidentiality orders remain in full effect until superseded by entry of this Order. All stipulations and/or protective orders entered in a case subsequently transferred to or directly filed in MDL 2016 shall be vacated upon entry of the Conditional Transfer Order listing the specific case on the MDL 2016 docket. This Order shall govern the treatment of Protected Documents and Confidential Information in all cases pending in MDL 2016.

25. This Order shall be filed in the master case file for MDL 2016 and in each individual MDL case file. Exhibits A, B, and C to this Order shall be captioned with the applicable individual case file information.

IT IS SO STIPULATED.

DATED:

May 6, 2009

Elizabeth J. Cabraser (with permission by Paulina do Amaral)

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Lead Counsel for Plaintiffs

DATED:

May 6, 2009

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Lead Counsel for Yamaha Defendants
YAMAHA MOTOR COMPANY, LTD., YAMAHA MOTOR
CORPORATION, U.S.A., YAMAHA MOTOR
MANUFACTURING CORPORATION OF AMERICA,
COLUMBUS YAMAHA LP, GULLO & PAZ MOTOR
SPORTS & MARINE LP; AND POLARIS OF
HOPKINSVILLE, LLC

DATED:

May 6, 2009

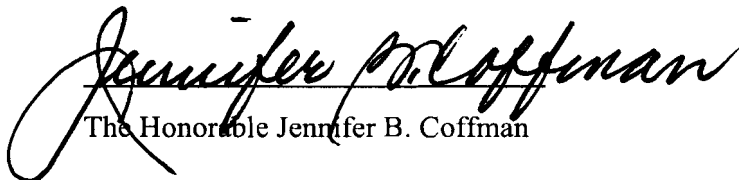
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Lead Counsel for the Non-Yamaha Defendants

IT IS SO ORDERED.

Dated this 11th day of May, 2009


The Honorable Jennifer B. Coffman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

In re: YAMAHA MOTOR CORP. RHINO
ATV PRODUCTS LIABILITY
LITIGATION

This document relates to:

Judge Jennifer B. Coffman

MASTER FILE NO. 2009-md-2016

MDL No. 2016

EXHIBIT A

I certify that I have read the attached Stipulation and Protective Order entered in the above entitled and numbered action. Before reviewing or receiving access to the contents of any documents, materials and/or matters designated as "Confidential" or "Confidential Pursuant to Protective Order," I acknowledge and agree that I am personally bound by and subject to the terms of the Stipulation and Protective Order. I further agree to abide by all terms of the Stipulation and Protective Order. I subject myself to the jurisdiction and venue of this Court for the purpose of enforcement of the Stipulation and Protective Order.

Signed this _____ day of _____, 200__.

Signature

Name

Address

3. In formulating my opinions or in preparing for and/or assisting in the trial of the above-captioned action, I have provided the following individuals copies of, or access to, the Protected Documents at the address stated:

4. The individuals listed in Paragraph 3 are the only individuals to whom I provided copies of, or access to, the Protected Documents.

5. Before providing copies of, or access to, the Protected Documents to the individuals listed in Paragraph 3, I required that said individuals read a copy of the Stipulation and Protective Order in this action.

6. The individuals listed in Paragraph 3 must timely execute Affidavits in the form of Exhibit A and B to this Order agreeing to be bound by this Order, stating that they have complied with the terms of the Stipulation and Protective Order and affirming they have returned all copies of Protected Documents and a copy of each such Affidavit is attached hereto.

7. With the Affidavit, I have returned all copies of Protected Documents provided to me in the above-captioned action pursuant to the Stipulation and Protective Order and have returned all Affidavits of those individuals to whom I provided copies of, or access to, the Protected Documents.

8. I have made no copies of the Protected Documents provided pursuant to the Stipulation and Protective Order, other than those that have been returned to counsel.

9. After submitting this Affidavit and the attached Affidavits of all individuals listed in Paragraph 3 as well as all copies of the Protected Documents to counsel, pursuant to the requirements set forth in the Stipulation and Protective Order, I will not have any copies of the Protected Documents.

10. I have otherwise complied with all of the terms of the Stipulation and Protective Order covering confidential documents and materials produced in the above-captioned action.

Affiant

SUBSCRIBED TO AND SWORN to me, a Notary Public, this _____ day of _____, 200__.

Notary Public

My Commission Expires:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

In re: YAMAHA MOTOR CORP. RHINO
ATV PRODUCTS LIABILITY
LITIGATION

This document relates to:

Judge Jennifer B. Coffman

MASTER FILE NO. 2009-md-2016
MDL No. 2016

EXHIBIT C

I, _____, with the firm of _____, am an attorney representing the plaintiff(s) in the following action.

Case title: _____

Court: _____

Cause or Case Number: _____

I seek copies of the materials produced under the terms of the Stipulation and Protective Order regarding confidentiality of materials entered in In Re: Yamaha Motor Corp. Rhino ATV Products Liability Litigation, 09-MD-2016, MDL 2016, and agree to be bound by the terms of that Order. No later than after final dismissal or judgment (after all opportunity for appeal has been exhausted) is entered in this litigation, I agree to return copies of any materials produced under the terms of the Order to Yamaha. Nothing shall prevent me from returning these materials at an earlier time.

I consent to the personal jurisdiction of the Court in *In Re: Yamaha Motor Corp. Rhino ATV Products Liability Litigation*, 09-md-2016, MDL 2016 for the purposes of enforcement of the Stipulation and Protective Order covering the confidential materials I seek.

Signed this the day _____ of _____, 200__.

Signature

Name

Address