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26 IN THE UNITED STATES DISTRICT COURT  
27 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
28 WESTERN DIVISION

29 \_\_\_\_\_  
30 BCD FOODS, INC.,  
31 Plaintiff,  
32 v.  
33 CJ AMERICA, INC.,  
34 Defendant.

35 ) Case No. 2:10-CV-6300 GHK (BCx)  
36 ) ~~PROPOSED~~ PROTECTIVE  
37 ) ORDER  
38 ) Hon. George H. King  
39 ) Hon. Rosalyn M. Chapman

NOTE CHANGES MADE BY THE COURT.

NOTE CHANGES MADE BY THE COURT.

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1 IT IS HEREBY STIPULATED and agreed by and between counsel for  
2 the Parties that the terms and conditions of this Stipulated Protective Order shall  
3 be entered as follows:

4 **DEFINITIONS**

5 1. The term "Confidential Information" shall mean and include  
6 information contained or disclosed in any materials, including documents,  
7 portions of documents, answers to interrogatories, responses to requests for  
8 admissions, trial testimony, hearing testimony, deposition testimony, and  
9 transcripts of trial testimony, hearings, and depositions, including data,  
10 summaries, and compilations derived therefrom that is deemed to be  
11 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – FOR COUNSEL  
12 ONLY" in accordance with Paragraph 7, by any Party or witness to which it  
13 belongs.

14 2. The terms "material" and "materials" shall include, but shall not be  
15 limited to: documents; correspondence; memoranda; e-mail messages;  
16 bulletins; specifications; customer lists or other materials that identify customers  
17 or potential customers; price lists or schedules or other matter identifying  
18 pricing; minutes; telegrams; letters; statements; cancelled checks; contracts;  
19 invoices; drafts; books of account; worksheets; notes of conversations; desk  
20 diaries; appointment books; expense accounts; recordings; photographs; motion  
21 pictures; compilations from which information can be obtained and translated  
22 into reasonably usable form through detection devices; sketches; drawings;  
23 notes; reports; instructions; disclosures; other writings; models, prototypes, and  
24 other physical objects.

25 3. The terms "discovery material" and "discovery materials" shall  
26 include all deposition testimony, all transcripts and other written or oral  
27 recordings of deposition or pre-trial or trial testimony, all answers, documents,  
28 and other discovery materials produced in response to notices of depositions,

1 interrogatories, requests for admissions, requests for production of documents  
2 and things, or subpoenas in this action, as well as all information thereby  
3 disclosed or communicated, all copies and summaries thereof, and all references  
4 thereto.

5 4. The term “counsel” shall include outside counsel of record, and  
6 other attorneys, paralegals, assistants, summer associates, and other support  
7 staff employed in the law firms: X-PATENTS, APC and KNOBBE,  
8 MARTENS, OLSON & BEAR, LLP. “Counsel” shall also include non-parties  
9 specifically retained by outside counsel of record to assist with copying and  
10 computer services necessary for document handling, and other litigation support  
11 personnel (e.g., graphic designers and animators), including trial consulting  
12 services and mock jurors retained by a Party who have read and all sign proper  
13 acknowledgements to be bound by the terms of this protective order.

14 **GENERAL RULES**

15 5. This Protective Order shall govern all disclosures of discovery  
16 materials made pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.

17 6. All materials and discovery materials of a non-public nature shall  
18 be used solely in connection with this litigation and not for any other purpose.  
19 All materials and discovery materials whose disclosure is restricted by this  
20 Protective Order shall not be disclosed to anyone except as provided herein.

21 7. Each Party or witness to this litigation that produces or discloses  
22 any materials, discovery materials, or information that the producing Party or  
23 witness reasonably believes in good faith should be subject to this Protective  
24 Order may designate the same as “CONFIDENTIAL” or “HIGHLY  
25 CONFIDENTIAL – FOR COUNSEL ONLY,” as follows:

26 a. Designation as “CONFIDENTIAL”: Any Party or witness  
27 may designate information as “CONFIDENTIAL” only if, in the  
28 reasonable and good faith belief of such Party or witness and its counsel

1 that such material or discovery material is properly entitled to protection  
2 under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the  
3 information is of the following type: (i) a trade secret entitled to  
4 protection under the Uniform Trade Secrets Act, as adopted in California;  
5 (ii) technical, financial, business, or marketing information that the  
6 disclosing Party reasonably believes would cause competitive harm to the  
7 disclosing Party if it were publicly disclosed; or (iii) information that the  
8 disclosing Party has independently agreed in the ordinary course of  
9 business to maintain in confidence for the benefit of a third party.

10 b. Designation as “HIGHLY CONFIDENTIAL – FOR  
11 COUNSEL ONLY”: Any Party or witness may designate information as  
12 “HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY” only if, in the  
13 reasonable and good faith belief of such Party or witness and its counsel  
14 that such material or discovery material is properly entitled to protection  
15 under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the  
16 information: (i) is of any of the types of information identified herein  
17 under the definition for designation of information as  
18 “CONFIDENTIAL”; and (ii) relates to certain financial, pricing, cost,  
19 licensing, supplier, distributor, vendor, marketing, business strategy,  
20 sales, customer, employment, development, and/or technical information  
21 that is particularly sensitive and/or of immediate competitive significance.

22 8. No material or discovery material shall be designated  
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – FOR COUNSEL  
24 ONLY” if the material has been published, distributed to the public, or disclosed  
25 to a non-party without a confidentiality agreement or a reasonable expectation  
26 that the material would be maintained by the non-party in confidence.

27 9. Care shall be taken by the producing Party or witness to use the  
28 designation “HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY” only

1 where the producing Party or witness has a reasonable and good faith belief that  
2 such protection is needed.

3 10. In the event that the producing Party elects to produce materials or  
4 discovery materials for inspection, no marking need be made by the producing  
5 Party in advance of the initial inspection. For the purpose of the initial  
6 inspection, all materials or discovery materials produced shall be considered as  
7 "HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY," and shall be treated  
8 as such pursuant to the terms of this Order. Thereafter, upon selection of  
9 specified materials or discovery materials for copying by the inspecting Party,  
10 the producing Party shall, within a reasonable time prior to producing those  
11 materials or discovery materials to the inspecting Party, mark the copies of those  
12 materials or discovery materials that contain Confidential Information with the  
13 appropriate confidentiality marking.

14 11. Whenever a deposition taken on behalf of any Party involves a  
15 disclosure of Confidential Information of any Party:

16 a. the deposition or portions thereof shall be designated as  
17 containing Confidential Information subject to the provisions of this  
18 Order; such designation shall be made on the record whenever possible,  
19 but a Party may designate portions of depositions as containing  
20 Confidential Information after transcription of the proceedings; a Party  
21 shall have until fourteen (14) calendar days after receipt of the deposition  
22 transcript to inform the other Party or Parties to the action of the portions  
23 of the transcript designated "CONFIDENTIAL" or "HIGHLY  
24 CONFIDENTIAL – FOR COUNSEL ONLY"; the Parties shall  
25 automatically treat all such testimony as "HIGHLY CONFIDENTIAL –  
26 FOR COUNSEL ONLY" until the expiration of fourteen (14) calendar  
27 days after the mailing (via overnight mail) to counsel of the transcript of  
28 the testimony; confidentiality is thereafter waived as to any such

1 testimony, or any portion thereof, as to which no confidentiality  
2 designation has been made at the time the testimony is given or during the  
3 14-day period, unless otherwise stipulated or ordered by the Court; the  
4 Parties may modify this procedure for any particular deposition or  
5 proceeding through agreement on the record at such deposition or  
6 proceeding or otherwise by written stipulation, without further order of  
7 the Court;

8 b. the disclosing Party shall have the right to exclude from  
9 attendance at the deposition, during such time as the Confidential  
10 Information is to be disclosed, any person other than the deponent,  
11 counsel (including their staff and associates), the court reporter, the  
12 videographer (if any), and the person(s) agreed upon pursuant to  
13 Paragraph 13 below;

14 c. deposition testimony or exhibits designated as Confidential  
15 Information shall be transcribed and bound separately and marked with  
16 the designated confidentiality legend at the request of the designating  
17 Party, and access thereto shall be limited pursuant to the other terms of  
18 this Protective Order;

19 d. the originals of the deposition transcripts and all copies  
20 thereof shall bear the legend "CONFIDENTIAL" or "HIGHLY  
21 CONFIDENTIAL – FOR COUNSEL ONLY," as appropriate, and the  
22 Party noticing the deposition shall be responsible for preparing and  
23 distributing to all Parties bound versions of (i) a redacted transcript, with  
24 all Confidential Information removed; (ii) excerpts of all  
25 "CONFIDENTIAL" testimony, and (iii) excerpts of all "HIGHLY  
26 CONFIDENTIAL – FOR COUNSEL ONLY" testimony; and

27 e. any deposition transcript, or portion thereof, that contains  
28 Confidential Information shall not be filed with the Court unless it can be

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1 accomplished under seal, identified as being subject to this Order, and  
2 protected from being opened except by order of this Court; redacted or  
3 non-confidential deposition transcripts need not be filed under seal.

4 12. All materials or discovery materials designated as  
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – FOR COUNSEL  
6 ONLY" shall not be disclosed by the receiving Party to anyone other than those  
7 persons designated herein and shall be handled in the manner set forth below  
8 unless and until such designation is removed either by agreement of the Parties,  
9 or by order of the Court, and, in any event, shall not be used for any purpose  
10 other than in connection with this litigation.

11 13. Information designated "HIGHLY CONFIDENTIAL – FOR  
12 COUNSEL ONLY" shall be viewed only by the following persons: (a) the  
13 Court, <sup>AGR</sup> jury, court personnel, court reporters, and other persons connected with  
14 the Court; (b) counsel (as defined in Paragraph 4) of the receiving Party; and (c)  
15 independent experts under the conditions set forth in Paragraph 14.

16 14. The right of an independent expert to receive Confidential  
17 Information shall be subject to the advance approval of such expert by the  
18 producing Party or by permission of the Court. The Party seeking approval of  
19 an independent expert shall provide the producing Party with the name and  
20 *curriculum vitae* of the proposed independent expert, and an executed copy of  
21 the form attached hereto as Exhibit A, in advance of providing any Confidential  
22 Information of the producing Party to the expert. Any objection by the  
23 producing Party to an independent expert receiving Confidential Information  
24 must be made in writing within seven (7) calendar days following receipt of the  
25 identification of the proposed expert. Confidential Information may be  
26 disclosed to an independent expert if the seven-day period has passed and no  
27 objection has been made. The approval of independent experts shall not be  
28 unreasonably withheld. The Parties shall attempt to resolve any objections



1 informally. If the objections cannot be resolved, then the Party opposing  
2 disclosure of the Confidential Information to the expert may move the Court for  
3 an Order prohibiting the disclosure and shall bear the burden of proof with  
4 respect to the propriety of its objection and blocking of the individual from  
5 serving as an expert in this case. Any Party that fails to file such a motion  
6 within seven (7) calendar days of notifying a Party of an objection to disclosure  
7 shall be deemed to have waived such objection, and the Parties shall be deemed  
8 to have agreed upon disclosure to the expert.

9 15. Information designated "CONFIDENTIAL" shall be viewed only  
10 by the following persons: (a) the Court, <sup>AGR</sup> jury, court personnel, court reporters,  
11 and other persons connected with the Court; (b) counsel (as defined in  
12 Paragraph 4) of the receiving Party; (c) independent experts under the  
13 conditions set forth in Paragraph 14; and (d) the additional individuals listed  
14 below, provided that each such individual has read this Order in advance of  
15 disclosure and has agreed in writing to be bound by its terms by executing the  
16 attached Agreement To Be Bound by Protective Order and a copy of such  
17 Agreement shall be retained by counsel for the receiving Party:

18 i. officers or employees of each Party, provided that they are  
19 materially involved in the prosecution, defense, or settlement of this  
20 matter; and

21 ii. stenographic and clerical employees associated with the  
22 individuals identified above in subpart (i).

23 16. With respect to material designated "CONFIDENTIAL" or  
24 "HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated  
25 on the face of the document to be its originator, author, or a recipient of a copy  
26 thereof, may be shown the same.

27 17. All information that has been designated as "CONFIDENTIAL" or  
28 "HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY" by the producing or

1 disclosing Party, and any and all reproductions thereof, shall be retained in the  
2 custody of the counsel for the receiving Party identified in Paragraph 4, except  
3 that independent experts authorized to view such information under the terms of  
4 this Order may retain custody of such copies as are necessary for their  
5 participation in this litigation but only for so long as is necessary for their  
6 participation in the litigation.

7 18. Before any materials or discovery materials that are designated as  
8 Confidential Information are filed with the Court for any purpose, the Party  
9 seeking to file such material or discovery materials shall seek permission from  
10 the Court to file the material under seal.

11 19. At any stage of these proceedings, any Party may object to a  
12 designation of materials as "CONFIDENTIAL" or "HIGHLY  
13 CONFIDENTIAL – FOR COUNSEL ONLY." The Party objecting to the  
14 confidentiality designation shall notify, in writing, counsel for the designating  
15 Party of the objected-to materials and the grounds for the objection. If the  
16 dispute is not resolved by agreement between the Parties within ten (10)  
17 calendar days of receipt of such notice, then the objecting Party may apply to  
18 the Court for relief by motion. Any such Motion for Protective Order shall be  
19 filed in strict compliance with Local Rules 37-1 and 37-2, including specifically  
20 the requirement of filing a Joint Stipulation in accordance with Local Rule 37-2.  
21 The materials at issue shall be treated as "CONFIDENTIAL" or "HIGHLY  
22 CONFIDENTIAL – FOR COUNSEL ONLY," as designated by the designating  
23 Party, until the Court has ruled on the motion or the matter has been otherwise  
24 resolved.

25 20. All Confidential Information shall be held in confidence by those  
26 inspecting or receiving it, and it shall be used only for purposes of this action.  
27 Counsel for each Party, and each person receiving Confidential Information,  
28 shall take reasonable precautions to prevent the unauthorized or inadvertent

1 disclosure of such information. If Confidential Information is disclosed to any  
2 person other than a person authorized by this Order, then the Party responsible  
3 for the unauthorized disclosure must immediately bring all pertinent facts  
4 relating to the unauthorized disclosure to the attention of the other Parties and,  
5 without prejudice to any rights and remedies of the other Parties, make every  
6 effort to prevent further disclosure by the Party and by the person(s) receiving  
7 the unauthorized disclosure.

8 21. No Party shall be responsible to another Party for disclosure of  
9 Confidential Information under this Order if the information in question is not  
10 labeled or otherwise identified as such in accordance with this Order.

11 22. If a Party, through inadvertence, produces any Confidential  
12 Information without labeling or marking or otherwise designating it as such in  
13 accordance with this Order, then the producing Party may give written notice to  
14 the receiving Party that the document or thing produced is deemed  
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – FOR COUNSEL  
16 ONLY," and that the document or thing produced should be treated as such in  
17 accordance with that designation under this Order. The receiving Party must  
18 treat the materials or discovery materials accordingly, once the designating  
19 Party so notifies the receiving Party. If the receiving Party has disclosed the  
20 materials or discovery materials before receiving the designation, then the  
21 receiving Party must notify the designating Party in writing of each such  
22 disclosure. Counsel for the Parties shall agree on a mutually acceptable manner  
23 of labeling or marking the inadvertently produced materials as  
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – FOR COUNSEL  
25 ONLY."

26 23. This Order shall not bar counsel (as defined in Paragraph 4) in the  
27 course of rendering advice to his or her client from referring to or relying in a  
28 general way upon his or her examination of Confidential Information produced

1 or exchanged herein; provided, however, that in rendering such advice and  
2 otherwise communicating with his or her client, the attorney shall not disclose  
3 the specific contents or substance of any Confidential Information produced by  
4 another Party herein if that disclosure would be contrary to the terms of this  
5 Order.

6 24. Privilege Log – Any privileged communication that occurs solely  
7 between all or some of the following individuals does not need to be logged by  
8 the Parties on their privilege log: (a) the Party; (b) its outside counsel who has  
9 filed an appearance in this matter; and (c) experts and consultants retained by  
10 the Party or its counsel specifically for the present litigation. The omission of  
11 any such communication from a Party's privilege log will not constitute a  
12 waiver of any privilege. Privilege or work product materials created on or after  
13 August 24, 2010 (*i.e.*, the filing date of this litigation) do not need to be logged  
14 by the Parties on their privilege logs. A privilege log entry, for instance, will  
15 identify at a minimum all persons involved in the communication, an  
16 identification of all attorneys involved in the communication, the date of the  
17 communication, whether the communication is protected by the attorney-client  
18 privilege, the work product doctrine and/or both, and a reasonably specific  
19 description of the subject matter of the communication.

20 25. If information is produced in discovery in this matter that is subject  
21 to a claim of privilege or protection as trial-preparation material, then the Party  
22 making the claim may notify any Party that received the information of the  
23 claim and the basis for it within fourteen (14) calendar days of having  
24 discovered that such information was produced. After being notified of the  
25 claim, a Party receiving such information must promptly return, sequester, or  
26 destroy the specified information and any copies, and such Party may not use or  
27 disclose the information until the claim is resolved. The Party receiving such  
28 information must confirm in writing that it has returned, sequestered, or

1 destroyed the specified information and any copies thereof. If the receiving  
2 Party disclosed the information before being notified, then it must take  
3 reasonable steps to retrieve it. If the receiving Party disputes the claim or  
4 believes the protection has been waived, then it may present the information to  
5 the Court under seal within fourteen (14) calendar days of receiving the notice  
6 for a determination of the claim. The producing Party must preserve the  
7 information until the claim is resolved.

8 26. The inadvertent disclosure of privileged or work product protected  
9 material shall not constitute a waiver of privilege as between the Parties or any  
10 other third party, as governed by Rule 502 of the Federal Rules of Evidence.  
11 The entry of this Protective Order by the Court constitutes a court order under  
12 Rule 502(d) of the Federal Rules of Evidence.

13 27. In the event that a Party seeks discovery from a non-party to this  
14 action, either the non-party or the Parties may invoke the terms of this Order  
15 with respect to any Confidential Information provided to the Parties by the non-  
16 party by so advising all Parties in this suit in writing. Any non-party that  
17 discloses Confidential Information under this Order shall be entitled to the  
18 rights of a Party under this Protective Order with respect to those produced  
19 materials.

20 28. Nothing herein shall prejudice the right of any Party to object to the  
21 production of any discovery material on the grounds that the material is  
22 protected as privileged or as attorney work product.

23 29. This Order shall be without prejudice to the right of any Party to  
24 oppose production of any information for lack of relevance or any other ground  
25 other than the mere presence of Confidential Information. The existence of this  
26 Order shall not be used by any Party as a basis for discovery that is otherwise  
27 improper under the Federal Rules of Civil Procedure.

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1           30. Nothing herein shall be construed to prevent disclosure of  
2 Confidential Information if such disclosure is required by law or by order of the  
3 Court. If any Party is subpoenaed in another action, served with a demand in  
4 another action to which it is a Party, or served by any legal process by one not a  
5 Party to the above-captioned action, seeking information that was designated by  
6 an opposing Party as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
7 FOR COUNSEL ONLY," then the Party shall give written notice by hand,  
8 e-mail, or facsimile transmission within ten (10) calendar days of receipt of such  
9 subpoena, demand, or legal process to the opposing Party who designated the  
10 information and shall object to its production to the extent permitted by law,  
11 setting forth the existence and terms of this Protective Order. Nothing herein  
12 shall be construed as requiring the Party or anyone else covered by this  
13 Protective Order to challenge or appeal any court or administrative order  
14 requiring production of information subject to this Protective Order, or subject  
15 itself to any penalties for noncompliance with any legal process or order, or to  
16 seek any relief from this Court.

17           31. Within forty-five (45) calendar days after the final termination of  
18 this action, including any and all appeals, counsel for each Party shall, upon  
19 request of the producing Party, return all Confidential Information to the Party  
20 that produced the information, including any copies, excerpts, and summaries  
21 thereof, or shall destroy the same at the option of the receiving Party and shall  
22 purge all such information from all machine-readable media on which it resides.  
23 Notwithstanding the foregoing, counsel for each Party may retain all pleadings,  
24 briefs, memoranda, motions, and other documents filed with the Court that refer  
25 to or incorporate Confidential Information, and counsel will continue to be  
26 bound by this Order with respect to all such retained information. Further,  
27 attorney work product materials that contain Confidential Information need not  
28 be destroyed; however, if they are not destroyed, then the person in possession

1 of the attorney work product will continue to be bound by this Order with  
2 respect to all such retained information.

3 32. The restrictions and obligations set forth herein shall not apply to  
4 any information that: (a) the Parties agree should not be designated  
5 Confidential Information; (b) the Parties agree, or the Court rules, is already  
6 public knowledge; (c) the Parties agree, or the Court rules, has become public  
7 knowledge other than as a result of disclosure by the receiving Party, its  
8 employees, or its agents in violation of this Order; or (d) has come or shall come  
9 into the receiving Party's knowledge legitimately and independently of the  
10 production by the designating Party. Prior knowledge must be established by  
11 pre-production documentation.

12 33. The restrictions and obligations herein shall not be deemed to  
13 prohibit discussions of any Confidential Information with anyone if that person  
14 already has or obtains legitimate possession thereof.

15 34. Transmission by e-mail is acceptable for all notification purposes  
16 herein.

17 35. This Order may be modified by agreement of the Parties, subject to  
18 approval by the Court.

19 36. The Court may modify the terms and conditions of this Order for  
20 good cause, or in the interest of justice, or on its own order at any time. The  
21 Parties prefer that the Court provide them with notice of the Court's intent to  
22 modify the Order and the content of those modifications, prior to entry of such  
23 an order.

24 **IT IS SO ORDERED.**

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26 Dated: July 11, 2011

Alicia G. Rosenberg  
27 UNITED STATES MAGISTRATE JUDGE  
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**EXHIBIT A**  
IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

BCD FOODS, INC.,	}	Case No. 2:10-CV-6300 GHK (RCx)
Plaintiff,	}	<b>[PROPOSED] PROTECTIVE ORDER</b>
v.	}	Hon. George H. King
CJ AMERICA, INC.,	}	Hon. Rosalyn M. Chapman
Defendant.	}	

In consideration of the disclosure to me or production by me of certain information that is designated or, upon production, may be designated as subject to a Protective Order of the Court, I, \_\_\_\_\_, declare and agree as follows:

1. I am employed as \_\_\_\_\_ by \_\_\_\_\_, which has the following address: \_\_\_\_\_.

2. I have read the Protective Order entered in the above-captioned case, and I have received a copy of the Protective Order.

3. I agree to be bound by the terms of the Protective Order.

4. I agree that I will use any and all "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY" information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order and only to assist counsel in the litigation of this matter.

5. I agree that I will not disclose or discuss such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – FOR COUNSEL ONLY" information with anyone other than the persons described in Paragraphs 4, 13, and 15 of the Protective Order.



1           6. I agree to submit to the jurisdiction of the United States District  
2 Court for the Central District of California for the purpose of enforcement of the  
3 Protective Order.

4           7. I understand that if I violate the terms of the Protective Order, then  
5 I may be subject to a contempt of court proceeding.

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7 Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

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