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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CAVS USA, INC., a California corporation,

Plaintiff,

vs.

SLEP-TONE ENTERTAINMENT CORPORATION, d.b.a. SOUND CHOICE, a North Carolina corporation,

Defendant.

Case No. 2:11cv05574-DDP-JEM

~~PROPOSED~~ ORDER

Complaint Filed: July 6, 2011
Trial Date: N/A

1 Having considered the parties’ [Proposed] Stipulated Protective Order set
2 forth below and finding good cause therefore, it is hereby ORDERED that the
3 following Stipulation between the parties shall be the Order of the Court:

4 **PURPOSE AND LIMITATIONS.** The parties acknowledge that each
5 possesses, controls, or has in its custody certain non-public information that
6 constitutes confidential, proprietary, or private information for which special
7 protection from public disclosure and from use for any purpose other than this
8 litigation is warranted. The parties acknowledge that this Order does not confer
9 blanket protections on all disclosures or responses to discovery and that the
10 protection this Order affords extends only to the limited information or items that
11 are entitled under the applicable legal principles to treatment as confidential. The
12 parties further acknowledge that this Order creates no entitlement to file
13 confidential information under seal and that Local Civil Rule 79-5 sets forth the
14 procedures that must be followed and reflects the standards that will be applied
15 when a party seeks permission from the court to file material under seal. The
16 parties agree to cooperate for the purpose of limiting – to the extent possible – the
17 need to file materials under seal.

18 **1. DEFINITIONS.**

19 **1.1.** The term “Action” means this case no. 2:11cv05574-DDP-JEM
20 and any subsequent adjudication of the claims asserted herein by and among any of
21 the parties to this case, including but not limited to requests to enforce or challenge
22 any award entered or any appeals or retrials.

23 **1.2.** The term “Designating Party” means a party or non-party that
24 designates any Disclosure in this Action as “Confidential” or “Attorneys’ Eyes
25 Only.”

26 **1.3.** The term “Disclosure” means any item, document, or
27 information, regardless of the medium or manner generated, stored, or maintained
28 (including, among other things, testimony, transcripts, and tangible things) that is

1 produced, made available for inspection, or generated in response to discovery or
2 through any other means of disclosure in this Action other than at court
3 proceedings.

4 **1.4.** The term “In-House Counsel” means any attorney who is an
5 employee of a party, or of an entity under common control of a party, who is
6 responsible for managing litigation for that party.

7 **1.5.** The term “Outside Counsel” means any attorney who is not an
8 employee of a party, or of an entity under common control of a party, but who is
9 retained to represent or advise a party in this Action.

10 **1.6.** The term “Producing Party” means a party or non-party that
11 provides a Disclosure in this Action.

12 **1.7.** The term “Professional Vendor” means a person or entity that
13 provides litigation support services (e.g., photocopying; videotaping; translating;
14 preparing exhibits or demonstrations; organizing, storing, or retrieving data in any
15 form; trial or jury consulting; etc.) and employees and subcontractors thereof.

16 **1.8.** The term “Protected Information” means any Disclosure that is
17 designated as “Confidential” or “Attorneys’ Eyes Only.”

18 **1.9.** The term “Receiving Party” means a party that receives a
19 Disclosure from a Producing Party.

20 **2. SCOPE.** The protections conferred by this Order cover all Protected
21 Information; any information copied or extracted therefrom; all copies, excerpts,
22 summaries, and compilations thereof; and all testimony, conversations, and
23 presentations by the parties or their counsel that might reveal Protected Information
24 other than in proceedings before the Court.

25 **3. DURATION.** This Order shall survive the termination of this Action
26 and shall remain in full force and effect unless modified by an Order of this Court
27 or other court of competent jurisdiction or by the written stipulation of the parties
28 filed with this Court.

1 **4. DESIGNATING PROTECTED INFORMATION.**

2 **4.1. “Confidential” Designation.** Any party (including any third
3 party who is producing documents or information in the Action) may designate as
4 “Confidential” and subject to this Protective Order any Disclosure or portion
5 thereof that the party believes in good faith to contain trade secrets; competitively
6 sensitive technical, marketing, financial, or sales information or other proprietary or
7 confidential business information; private or confidential personal information; or
8 information received in confidence from a third party.

9 **4.2. “Attorneys’ Eyes Only” Designation.** A party (including any
10 third party who is producing documents or information in the Action) may
11 designate as “Attorneys’ Eyes Only” and subject to this Protective Order any
12 Disclosure or portion thereof that the party believes in good faith to contain highly
13 sensitive business or personal information, the disclosure of which is likely to cause
14 significant harm to an individual or to the business or competitive position of the
15 party.

16 **4.3. Exercise of Restraint and Care in Designating Protected**
17 **Information.** A Designating Party must take care to designate as Protected
18 Information only those parts of Disclosures that qualify so that other portions of the
19 Disclosures for which protection is not warranted are not swept unjustifiably within
20 the ambit of this Order. Mass, indiscriminate, or routinized designations are
21 prohibited. Designations that are shown to be clearly unjustified or that have been
22 made for an improper purpose (e.g., to unnecessarily encumber or retard the case
23 development process, or to impose unnecessary expenses and burdens on other
24 parties) may expose the Designating Party to sanctions if such improper
25 designations are not reasonably withdrawn or corrected upon request by the
26 Receiving Party. If after designating a Disclosure as Protected Information the
27 Designating Party believes that such Disclosure does not qualify for the level of
28 protection asserted, the Designating Party shall promptly notify all other parties in

1 writing and, if the Designating Party was the Producing Party, shall promptly
2 correct the mistaken designation by providing a replacement production marked in
3 accordance with Section 5.5 below.

4 **4.4. Timing of Designations.** Except as otherwise provided in this
5 Section 5.4, a Producing Party shall designate any Disclosure that qualifies for
6 protection under this Order at or before such time that the Disclosure is produced or
7 disclosed to a Receiving Party. A Producing Party that makes original documents
8 or materials available for inspection need not designate them for protection until
9 after the Receiving Party has indicated which material it would like copied and
10 produced. During the inspection and before the designation, all of the material
11 made available for inspection shall be treated as having “Attorneys’ Eyes Only”
12 designation. After the Receiving Party has identified which portions of the
13 Disclosure it wants copied and produced, the Producing Party must determine to
14 what extent those portions of the Disclosure qualify for protection under this Order,
15 and, before producing the specified portions of the Disclosure, the Producing Party
16 shall affix where applicable the appropriate legend of “Confidential” or “Attorneys’
17 Eyes Only” in the manner provided in Section 5.5.

18 **4.5. Manner of Designations.** Disclosing Parties shall designate
19 Protected Information as “Confidential” or “Attorneys’ Eyes Only” as follows:

20 **4.5.1. Documents.** In the case of documents produced in
21 response to requests for production, interrogatories, requests for admission, or
22 otherwise disclosed during discovery or the course of this Action, designation shall
23 be made by placing on every page containing Protected Information the legend
24 “Confidential” or “Attorneys’ Eyes Only” as applicable. The foregoing shall not
25 preclude the inclusion of additional text in the legend, such as “Subject to
26 Protective Order” or other similar designation. The “Confidential” and “Attorneys’
27 Eyes Only” designations shall be deemed to apply to the pages so marked and to
28 the information contained therein. If only a portion of the material on a page

1 qualifies for protection, the Designating Party shall clearly identify the protected
2 portion (e.g., by making appropriate markings in the margins) and shall specify, for
3 each such portion, the level of protection being asserted (i.e., “Confidential” or
4 “Attorneys’ Eyes Only”).

5 **4.5.2. Depositions.** Proceedings at a deposition may be
6 designated as “Confidential” or “Attorneys’ Eyes Only” by the Designating Party
7 identifying on the record, before the close of the deposition, the portions of the
8 proceedings that qualify as “Confidential” or “Attorneys’ Eyes Only.” When it is
9 impractical to identify separately each portion of testimony that is entitled to
10 protection, and when it appears that substantial portions of the testimony may
11 qualify for protection, the Designating Party may invoke on the record, before the
12 conclusion of the deposition, a right to have up to fourteen days to review the
13 transcript and identify the specific portions of the testimony as to which protection
14 is sought and to specify the level of protection being asserted (i.e., “Confidential”
15 or “Attorneys’ Eyes Only”). During that fourteen-day period, the transcript and
16 testimony will be treated as “Attorneys’ Eyes Only.” Arrangements shall be made
17 with the court reporter taking and transcribing such deposition, to separately bind
18 such portions of the transcript containing Protected Information and to label such
19 portions with the appropriate legend of “Confidential” or “Attorneys’ Eyes Only”
20 as instructed by the Designating Party.

21 **4.5.3. Non-Paper Media.** For Disclosures produced in some
22 form other than on paper, and for any tangible items other than papers, the
23 Designating Party shall affix in a prominent place on the exterior of such non-paper
24 media the legend “Confidential” or “Attorneys’ Eyes Only” as applicable. If only
25 portions of such non-paper Disclosures warrant protection, the Designating Party
26 shall, to the extent practicable, identify the protected portions, specifying whether
27 they qualify as “Confidential” or “Attorneys’ Eyes Only.” In the event a Receiving
28 Party generates any hard copy reproduction of such non-paper media Disclosures,

1 such Receiving Party shall mark and treat such hard copy with the appropriate
2 legend(s) as set forth for documents in Paragraph 4.5.1 above.

3 **4.6. Failures to Designate; No Waiver.** The parties shall take
4 reasonable precautions and use best efforts to protect against the improper or
5 unauthorized disclosure of Protected Information. Disclosures of Protected
6 Information that should have been designated as such (or designated at a higher
7 level of protection) shall not be deemed a waiver of a party's claim of
8 confidentiality, either as to the specific Disclosures or as to any other information
9 concerning the same or related subject matter. Such a Disclosure of Protected
10 Information may be rectified by written notice to all Receiving Parties promptly
11 after the Producing Party learns of the Disclosure that should have been designated
12 as Protected Information (or designated at a higher level of protection). Such
13 written notice shall constitute a designation of the Disclosure as "Confidential" or
14 "Attorneys' Eyes Only" Protected Information as the case may be, and the
15 Producing Party shall promptly provide a replacement production marked in
16 accordance with Section 5.5 above. The Receiving Party shall make reasonable
17 efforts to ensure that the material so designated is treated in accordance with the
18 provisions of this Order.

19 **5. ACCESS TO PROTECTED INFORMATION.**

20 **5.1. Access to "Attorneys' Eyes Only" Information.** Absent
21 written permission from the Designating Party or an Order from this Court and
22 unless otherwise provided in this Order, Disclosures designated "Attorneys' Eyes
23 Only" shall be used solely for the purpose of this Action and may be disclosed only
24 to the following persons:

25 **5.1.1.** Outside Counsel in this Action and all attorneys,
26 paralegals, and administrative and clerical employees of the law firm of such
27 Outside Counsel;
28

1 **5.1.2.** experts and consultants who are assisting Outside Counsel
2 in the preparation for any deposition, hearing, trial, or other proceeding in this
3 Action and who agree to be bound by the terms of this Order by executing the
4 “Agreement to Be Bound by Protective Order” (Exhibit A);

5 **5.1.3.** the Court and its personnel;

6 **5.1.4.** any court reporter, videographer, or interpreter
7 transcribing, recording, or interpreting testimony that includes Protected
8 Information;

9 **5.1.5.** any person identified by the Designating Party or on the
10 face of a protected Disclosure as an author, recipient, or authorized custodian of the
11 Disclosure or the Protected Information contained therein;

12 **5.1.6.** Professional Vendors hired by and under the control and
13 supervision of Outside Counsel and necessary to assist Outside Counsel in
14 preparation for trial or in fulfilling a party’s discovery obligations; and

15 **5.1.7.** any other person agreed upon by the parties in writing or
16 as Ordered by the Court.

17 **5.2. Access to “Confidential” Information.** Absent written
18 permission from the Designating Party or an Order from this Court and unless
19 otherwise provided in this Order, Disclosures designated “Confidential” shall be
20 used solely for the purpose of this Action and may be disclosed only to the
21 following persons:

22 **5.2.1.** any person having access to “Attorneys’ Eyes Only”
23 information as provided in Section 5.1 above;

24 **5.2.2.** current employees (including independent contractors
25 whose primary job is to work at the Receiving Party’s office or facility), In-House
26 Counsel, officers, and directors of a party to this Action to whom Outside Counsel
27 believes disclosure to be reasonably necessary for this Action;

28

1 **5.2.3.** former employees (including independent contractors
2 whose primary job is to work at the Receiving Party’s office or facility), In-House
3 Counsel, officers, and directors of a party to this Action to whom Outside Counsel
4 believes disclosure to be reasonably necessary for this Action;

5 **5.2.4.** during their depositions, witnesses in the Action to whom
6 Outside Counsel believes disclosure to be reasonably necessary;

7 **5.2.5.** any person who is a superior to any person identified by
8 the Designating Party or on the face of a protected Disclosure as an author,
9 recipient, or authorized custodian of the Disclosure or the Protected Information
10 contained therein;

11 **5.2.6.** representatives of any insurer that may provide coverage
12 to any party for any of the claims asserted in this Action; and

13 **5.2.7.** any other person agreed upon by the parties in writing or
14 as Ordered by the Court.

15 **5.3. Storage and Copies of Protected Information.** The recipient
16 of any Protected Information shall maintain such Protected Information in a secure
17 and safe area and shall exercise the same standard of due care with respect to the
18 storage, custody, use, or dissemination of such Protected Information as is
19 exercised by the recipient with respect to its own proprietary information.
20 Protected Information shall not be copied, reproduced, summarized, or abstracted
21 except to the extent that such copying, reproduction, summarization, or abstraction
22 is intended for the conduct of this Action and believed in good faith to be
23 appropriate for that purpose. Any such copies, reproductions, summaries, and
24 abstracts shall be subject to the terms of this Order and labeled in the same manner
25 as the Protected Information upon which they are based. This provision shall not
26 apply to the Court or court personnel.

27 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.** A
28 party shall not be obligated to challenge the propriety of a “Confidential” or

1 “Attorneys’ Eyes Only” designation at the time made, and failure to do so shall not
2 preclude a subsequent challenge thereto during the pendency of this Action. In the
3 event that any party to this Action disagrees with such a designation, such party
4 may provide to the Designating Party written notice of its disagreement with the
5 designation. The parties shall first try to resolve such dispute in good faith on an
6 informal basis. If the dispute cannot be resolved, the party challenging the
7 designation may request appropriate relief from the Court in accordance with Local
8 Rules 37-1 and 37-2 (including the Joint Stipulation requirement). The Designating
9 Party will carry the burden of proving that it properly designated the subject
10 Disclosure as “Confidential” or “Attorneys’ Eyes Only.” Any challenged
11 designation will remain in force until otherwise determined, either by agreement of
12 the parties or by Order of the Court, as provided herein.

13 **7. FILING UNDER SEAL.** In accordance with Local Rule 79-5.1, if
14 any papers to be filed with the Court contain information and/or documents that
15 have been designated as “Confidential” or “Attorneys’ Eyes Only,” the proposed
16 filing shall be accompanied by an application to file the papers or the portion
17 thereof containing the designated information or documents (if such portion is
18 segregable) and if appropriate, the application itself under seal’ and the application
19 shall be directed to the judge to whom the papers are directed.

20 **8. NO APPLICATION TO PUBLIC OR OTHERWISE**
21 **AVAILABLE INFORMATION.** Notwithstanding the designation of any
22 Disclosure as “Confidential” or “Attorneys’ Eyes Only,” the same shall not be
23 deemed Protected Information shall not be subject to this Order if the substance
24 thereof:

25 **8.1.** is, at the time of disclosure by the Disclosing Party, public
26 knowledge by publication or otherwise;

1 **8.2.** becomes, at any time and through no act or failure to act on the
2 part of the Receiving Party and without breach of any obligation of confidence,
3 public knowledge;

4 **8.3.** has previously been disclosed in public by the Disclosing Party
5 to the Receiving Party or any third party without any obligation of confidence to the
6 Disclosing Party;

7 **8.4.** has been made available to the Receiving Party by a third person
8 who obtained it by legal means and without any obligation of confidence to the
9 Disclosing Party;

10 **8.5.** was previously known to the Receiving Party and can be
11 demonstrated by written documents to have been in the Receiving Party's
12 possession prior to the disclosure by the Producing Party; or

13 **8.6.** is independently developed or discoverable by employees or
14 consultants of the Receiving Party who did not have access to such Protected
15 Information.

16 **9. USE OF PROTECTED INFORMATION LIMITED TO THIS**
17 **ACTION.** The Receiving Party may use Protected Information only for the
18 purpose of conducting this Action and not for any business or other purpose
19 whatsoever, unless agreed to in writing by the Producing Party. No Protected
20 Information or the contents thereof may be disclosed to or used with any
21 representatives, agent, attorney, or employee of the Receiving Party, except as
22 provided herein. Nothing contained in this Order shall preclude a Disclosing Party
23 from using or disseminating its own Protected Information.

24 **11. THIRD PARTY PROTECTED INFORMATION.** In the case of a
25 third party disclosing documents or information in this litigation, within thirty (30)
26 days after receipt of a Disclosure from any such third party in this Action, any party
27 to this Action may designate any portion of such Disclosure as "Confidential" or
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1 “Attorneys’ Eyes Only” under this Order if such Disclosure has not otherwise been
2 so designated by the third party.

3 **12. INADVERTENT DISCLOSURE.** If a Receiving Party discloses
4 Protected Information through inadvertence or otherwise to any person or party not
5 authorized under this Protective Order, the Receiving Party shall immediately
6 notify the Disclosing Party of the disclosure, and the Receiving Party shall use its
7 best efforts to promptly retrieve all copies of any Disclosure containing such
8 Protected Information and to bind such person to the terms of this Protective Order,
9 including cooperating in obtaining an order of the Court to remedy the inadvertent
10 disclosure, if necessary. The Receiving Party also shall: (a) promptly inform such
11 unauthorized person of all the provisions of this Protective Order, including
12 providing such person with a copy of this Order; (b) identify such person
13 immediately to the Disclosing Party and inform the Disclosing Party of all pertinent
14 facts relating to the inadvertent disclosure; and (c) request that such unauthorized
15 person sign the “Agreement to Be Bound by Protective Order” (Exhibit A).

16 **13. USE OF OWN INFORMATION ALLOWED.** Nothing in this
17 Order shall prevent any Designating Party to the Action from disclosing or using, in
18 any manner or for any purpose, information or documents from that Designating
19 Party’s own files merely because the party itself has designated such information or
20 documents as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

21 **14. EXCLUSION OF INDIVIDUALS FROM DEPOSITIONS.**
22 Counsel for a Designating Party shall have the right to exclude from oral
23 depositions any person not authorized to access Protected Information as set forth
24 in Section 5 above. Such right of exclusion shall be applicable only during periods
25 of examination or testimony directed to or comprising Protected Information of the
26 Designating Party.

27 **15. CONCLUSION OF LITIGATION.** Within sixty (60) days of the
28 termination of all of this Action, whether through settlement or final judgment

1 (including any and all appeals therefrom), each Receiving Party shall, at the option
2 of the Receiving Party, either return to the Designating Party or destroy all
3 Protected Information produced by the Designating Party, except where the
4 Designating Party has previously requested that certain Protected Information be
5 returned. However, the parties shall be permitted to retain copies of work product
6 that incorporates, describes, or refers to Protected Information subject to the other
7 terms and conditions of this Order. Outside Counsel for each party shall be entitled
8 to retain all pleadings, motion papers, legal memoranda, correspondence, work
9 product, trial transcripts, and trial exhibits. This provision shall not apply to the
10 Court or court personnel.

11 **16. VIOLATIONS OF PROTECTIVE ORDER.** In the event that any
12 person or party violates or threatens to violate the terms of this Order, the aggrieved
13 Disclosing Party may immediately apply to obtain injunctive relief against such
14 person or party violating or threatening to violate this Order. The parties and any
15 other person subject to the terms of this Order agree that this Court shall retain
16 jurisdiction over it and them for the purpose of enforcing this Order.

17 **17. REQUIRED DISCLOSURES.** If Protected Information is requested
18 from any Receiving Party by a court, government entity, or third party pursuant to a
19 valid subpoena or other court order, the party receiving such request shall
20 immediately notify the other parties to this Action in writing and provide them a
21 reasonable time in which to object or take steps to protect their interests before any
22 Protected Information is produced. Nothing contained in this Protective Order is
23 intended to be construed as authorizing a party to disobey a lawful subpoena issued
24 in another action.

25 **18. ALL RIGHTS RESERVED.** Any party to this Action may apply to
26 the Court at any time for a modification of or an exception to this Order. Such
27 application may be made only after reasonable attempts have been made to meet
28 and confer with counsel for all other parties to this Action, and all parties shall have

1 a full and fair opportunity to be heard by the Court before modification of or
2 exception to this Order.

3 **19. NO WAIVER OF ATTORNEY-CLIENT PRIVILEGE OR**
4 **WORK-PRODUCT PROTECTION.** If information is produced in discovery
5 that is subject to a claim of privilege or protection as trial preparation material, the
6 party making the claim may notify any party that received the information of the
7 claim and the basis for it. After being notified, a party must promptly return,
8 sequester, or destroy the specified information and any copies it has; must not use
9 or disclose the information until the claim is resolved; must take reasonable steps to
10 retrieve the information if the party disclosed it before being notified; and may
11 promptly present the information to the court under seal for a determination of the
12 claim. The Producing Party must preserve the information until the claim is
13 resolved. Any disclosure or production in discovery in this Action of documents
14 that are protected by the attorney-client privilege or subject to work-product
15 protection will not constitute a waiver of either any available privilege or protection
16 by the disclosing party as a consequence of such disclosure or production. This
17 provision does not, however, prevent a party from raising some other basis as
18 establishing that the Producing Party has otherwise waived the attorney-client
19 privilege or work product protection as to the materials produced, or that such
20 privilege or protection does not apply to the materials produced.

21 **20. NO WAIVER OF OBJECTIONS, PRIVILEGES.** Nothing
22 contained in this Order shall affect or waive any party's right to object to the
23 admissibility, discoverability, or privileged or exempted nature of any Disclosure,
24 all such objections and exemptions being specifically preserved.

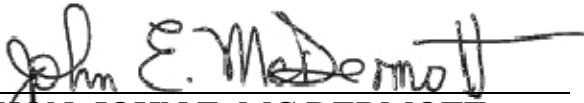
25 **21. MODIFICATION OR EXCEPTION UPON WRITTEN**
26 **AGREEMENT.** The parties may agree in writing to reasonable modifications of
27 or exceptions to this Order; however, no modification or exception by the parties
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1 shall have the force or effect of a Court Order unless the Court endorses such
2 modification or exception.

3 **22. HEADINGS.** The headings herein are provided only for the
4 convenience of the parties and are not intended to define or limit the scope of the
5 express terms of this Order.

6
7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8
9 DATED: October 25, 2011


HON. JOHN E. MC.DERMOTT
UNITED STATES DISTRICT JUDGE

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1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

3
4 I, _____, hereby acknowledge that I have received a
5 copy of the Protective Order entered in this action (Case No. 2:11cv05574-DDP-
6 JEM) by the United States District Court for the Central District of California
7 (hereinafter the "Protective Order") and further state and agree to the following:

8 1. I have either read and understood the Protective Order or have had the
9 terms of the Protective Order explained to me by my attorney.

10 2. I understand the terms of the Protective Order and agree to comply
11 with and to be bound by such terms.

12 3. If I receive documents or information designated as "Confidential" or
13 "Attorneys' Eyes Only" (as those terms are defined in the Protective Order), I
14 understand that such information is provided to me pursuant to the terms and
15 restrictions of the Protective Order.

16 4. I agree to hold in confidence and not further disclose or use for any
17 purpose other than as expressly permitted by the Protective Order any documents or
18 information disclosed to me pursuant to the terms of the Protective Order.

19 5. I hereby submit myself to the jurisdiction of the United States District
20 Court for the Central District of California for resolution of any matter or dispute
21 pertaining to the Protective Order and my receipt of information or documents
22 pursuant to the Protective Order.

23
24 Date: _____ Signature: _____
25 Name: _____
26 Address: _____
27 _____
28