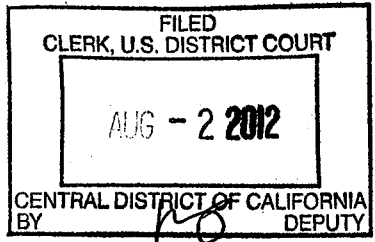


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 24 [Additional Counsel Listed on Signature Page]

25 UNITED STATES DISTRICT COURT
 26 CENTRAL DISTRICT OF CALIFORNIA

27 REBECCA BOHN, On Behalf of Herself and
 28 All Others Similarly Situated,
 Plaintiffs,
 v.
 PHARMAVITE, LLC, a California limited
 liability company,
 Defendant.

Case No. 2:11-cv-10430-GHK-AGR
 [PROPOSED] STIPULATED
 PROTECTIVE ORDER
 Courtroom: 650
 Judge: Honorable George H. King

GOOD CAUSE APPEARING THEREFOR, in light of the Stipulation For Entry Of
 Protective Order by and between Plaintiff Rebecca Bohn and defendant Pharmavite, LLC
 ("Pharmavite"), the Court enters this Protective Order in regard to certain discovery material to
 be made available by Pharmavite. This discovery material includes trade secrets and
 confidential, proprietary and non-public documents and information, the public disclosure of

NOTE CHANGES MADE BY THE COURT

NOTE CHANGES MADE BY THE COURT

1 which could be detrimental to the interests of Pharmavite and/or related corporate entities;
2 documents which may contain information that is personal and confidential to third parties,
3 including individuals; and documents and information subject to a claim of privilege or
4 immunity from discovery (including but not limited to attorney-client privilege, work product
5 immunity, and immunities created by federal or state statute or regulation). The parties have
6 stipulated that the above-described documents and information, including electronically stored
7 information, should be given the protection of an order of this Court to prevent irreparable harm
8 through disclosure to persons other than those persons involved in the prosecution or defense of
9 this litigation. This Protective Order shall govern certain documents, written discovery, and
10 testimony obtained by the parties in connection with pre-trial proceedings in this action.

11 I. **DEFINITIONS**

12 1. **Disclosure or Discovery Material:** all items or information, regardless of the
13 medium or manner generated, stored, or maintained (including, among other things, testimony,
14 transcripts, or tangible things) that are voluntarily exchanged, produced or generated by any
15 Party or non-party in disclosures or responses to discovery in this matter.

16 2. **“Confidential” Material:** information (regardless of how generated, stored, or
17 maintained) or tangible things that a Designating Party believes in good faith constitutes or
18 embodies matter used by it in or pertaining to its business, which matter is not generally known
19 and which the Designating Party would not normally reveal to third parties or would cause third
20 parties to maintain in confidence, and any other information that would qualify as Confidential
21 pursuant to the applicable legal standard.

22 3. **“Highly Confidential–Attorneys’ Eyes Only” Material:** certain limited
23 “Confidential” material or information that is competitively sensitive and constitutes or contains:
24 (1) technical information such as product design, (2) information within the definition of trade
25 secret provided by state or federal law, (3) formulae or source code, (4) research and
26 development information, (5) customer lists, (6) sales, cost, pricing, or other financial
27 information, (7) plans for strategic business initiatives or marketing plans, or (8) any other
28 information that contains the Designating Party’s trade secrets or other confidential research,

1 development, or commercial or financial information of an extremely sensitive nature that may
2 cause significant competitive harm to the Designating Party if disclosed to persons other than
3 those described in Section II, Paragraph 7, below.

4 4. **Protected Material:** any Disclosure or Discovery Material that is designated as
5 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only.”

6 5. **Expert:** a person with specialized knowledge or experience in a matter pertinent
7 to the litigation who has been retained by a Party or its Counsel to serve as an expert witness or
8 as a consultant in this action and who has been approved to receive Protected Material in
9 accordance with Section III, below.

10 6. **Professional Vendors:** persons or entities that provide litigation support services
11 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
12 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

13 **II. DESIGNATION AND TREATMENT OF PROTECTED MATERIALS**

14 1. In order to facilitate production of documents and other discovery in this matter,
15 any Producing Party may, by written notice, or by a statement on the record at a deposition,
16 designate any Disclosure or Discovery Material as “Confidential” or “Highly Confidential –
17 Attorneys’ Eyes Only” (hereinafter “Highly Confidential”), under the terms of this Order.

18 2. By designating Disclosure or Discovery Material as “Confidential” or “Highly
19 Confidential” the Designating Party is certifying to the Court that there is a good faith basis in
20 both law and fact for the designation within the meaning of Federal Rule of Civil Procedure
21 26(g). Confidential Material shall be so designated by clearly labeling, stamping or otherwise
22 marking the top or bottom of each page of the designated Material with the legend
23 “CONFIDENTIAL” (the “Confidential Legend”), including each page of any electronically
24 produced document. Highly Confidential Material shall be so designated by clearly labeling,
25 stamping or otherwise marking the top or bottom of each page of the designated Material with
26 the legend “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (the “Highly
27 Confidential Legend”), including each page of any electronically produced document. Any such
28 stamp or designation shall not in any manner cover up, overlap upon, obscure or otherwise

1 conceal any text, picture, drawing, graph or other communication or depiction in the document.
2 In the case of Confidential Information disclosed in a non-paper medium (e.g., videotape,
3 audiotape, computer disks, etc.), the appropriate designation shall be affixed on the outside of the
4 medium or its container so as to clearly give notice of the designation.

5 3. Any Party or non-party may also designate testimony or exhibits, or portions
6 thereof, given in deposition or pre-trial proceedings as Confidential Material or Highly
7 Confidential Material, by having its attorney orally designate such testimony or exhibits, or
8 portions thereof, during the proceeding. The deposition or court reporter shall be instructed to
9 clearly mark the designated testimony, and each designated exhibit with the Confidential Legend
10 or Highly Confidential Legend, as appropriate. Alternatively, any Party may designate
11 testimony or exhibits, or any portion thereof, as Confidential Material or Highly Confidential
12 Material by providing written notice to all parties within thirty (30) calendar days following
13 receipt of the transcript, of those portions of the transcript or exhibits which are to be considered
14 Confidential Material or Highly Confidential Material. During this period of review, all
15 transcripts will be automatically designated Highly Confidential, labeled as such and accorded
16 all protections for such material.

17 4. A Party may designate as "Confidential" or "Highly Confidential" any material
18 produced by a non-party by providing written notice to all parties within thirty (30) calendar
19 days after receiving such material, and providing a copy of the material which the Designating
20 Party has clearly labeled, stamped or otherwise marked with the Confidential Legend or Highly
21 Confidential Legend and the additional words "as designated by [Party]", for example
22 "CONFIDENTIAL as designated by PHARMAVITE, LLC." This Stipulated Protective Order
23 shall not limit the ability of any Party or non-party to voluntarily disclose to others any Protected
24 Material that originates from that Party or non-party.

25 5. In the event that another Party disagrees with a Party's designation of any
26 document or information as "Confidential" or "Highly Confidential," the objecting Party shall
27 advise counsel for the Designating Party, in writing, of the objection and identify the document
28 or item with sufficient specificity to permit identification. Within twenty (20) days of receiving

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1 the objection, the Designating Party shall advise the objecting Party's counsel whether the
2 Designating Party will change the designation of the document or item. If this cannot be
3 resolved between the parties, then the dispute will be presented to the Court by motion or
4 application. ~~otherwise.~~ During the pendency of any such motion, the designated document or item shall
5 continue to be treated as a stamped "Confidential" or "Highly Confidential" document and
6 subject to the provisions of this Order. On the hearing of any such motion, the burden shall be
7 on the Designating Party to establish that the designated document or item should be deemed
8 "Confidential" or "Highly Confidential."

9 6. Unless otherwise ordered by the Court or permitted in writing by the Designating
10 Party, the Receiving Party may disclose any information or item designated "Confidential" only
11 to "Qualified Persons," who are defined to consist solely of:

12 a. The Receiving Party's Counsel in this action, as well as employees of said
13 Counsel to whom it is reasonably necessary to disclose the information for this litigation;

14 b. The officers, directors, owners, members, partners, trustees, beneficiaries,
15 and employees of the Receiving Party or named plaintiff(s), to whom disclosure is reasonably
16 necessary for this litigation;

17 c. Experts (as defined in this Stipulated Protective Order) of the Receiving
18 Party who have been approved in accordance with Section III, below, and their administrative
19 support staff if any, to whom disclosure is reasonably necessary for this litigation and who have
20 signed the "Acknowledgement And Agreement To Be Bound By Protective Order" (Exhibit A);

21 d. The Court and its personnel;

22 e. Neutral evaluators, mediators or arbitrators assigned to the case by the
23 Court or retained for the case by the mutual agreement of the Parties;

24 f. Professional Vendors for services such as copying, scanning, or electronic
25 document processing to whom disclosure is reasonably necessary for this litigation;

26 g. Court reporters and their staff to whom disclosure is reasonably necessary
27 for this litigation;

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1 h. During their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the "Acknowledgment And Agreement To Be
3 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court;
4 and

5 i. Any author or recipient of the document or the original source of the
6 information disclosed in the document.

7 7. Unless otherwise ordered by the Court or permitted in writing by the Designating
8 Party, a Receiving Party may disclose any information or item designated "Highly Confidential"
9 only to those persons listed in Paragraph 6, (a),(c) - (i), above.

10 8. Protected Material shall not be disclosed or furnished to any person pursuant to
11 paragraphs 6(c) and 6(h) unless that person is informed of this Order and has signed the
12 "Acknowledgement And Agreement To Be Bound By Protective Order," appended hereto as
13 Exhibit A. It shall be the obligation of counsel providing the information to a Qualified Person
14 to retain a copy of all agreements executed pursuant to this paragraph until sixty (60) days
15 following the final termination of this litigation.

16 9. Protected Material must be stored and maintained by the Receiving Party at a
17 location and in a secure manner that reasonably ensures that access is limited to Qualified
18 Person(s) as defined by this Order.

19 10. The list of Qualified Person(s) to whom Protected Material may be disclosed may
20 be enlarged by written agreement of all counsel of record. If any Party proposes to expand the
21 list of Qualified Person(s), the parties will meet and confer regarding such proposal. If the
22 parties are unable to reach agreement, any Party may bring the issue to the Court for resolution.
23 Pending resolution by the Court, the list of Qualified Person(s) will not be expanded, and no
24 Protected Material may be disclosed to additional person(s).

25 11. Nothing in this Stipulated Protective Order shall impose any restrictions upon the
26 use or disclosure by a Party or witness of any document, material, or information obtained by
27 such Party or witness independently of the discovery proceedings in this action, whether or not
28

1 such document, material, or information is also obtained through discovery proceedings in this
2 action.

3 12. Entering into, agreeing to, and/or complying with the terms of this Stipulated
4 Protective Order shall not:

5 a. Operate as an admission by any Party that any particular document,
6 material, or information contains or reflects currently valuable trade secrets or proprietary
7 commercial information; or

8 b. Prejudice in any way the right of a Party to seek a determination by the
9 Court whether any particular document, material, or information should be subject to the terms
10 of this Stipulated Protective Order, such request and determination to be made in accordance
11 with paragraph 5 above; or

12 c. Operate as a waiver of any objection of either Party as to the admissibility
13 of a particular document into evidence. Nothing in this Order shall be construed to require any
14 Party to disclose to any other Party any Protected Material, or to prohibit any Party from refusing
15 to disclose Protected Material to any other Party.

16 13. In the event that any Protected Material is demanded from a Receiving Party by
17 way of subpoena, court order or otherwise, that Receiving Party shall immediately, and in no
18 event more than three (3) court days, notify the Designating Party by telephone and in writing of
19 the demand. The notice given to the Designating Party shall, in all events, be given before any
20 production or disclosure of Protected Material and shall include a copy of the subpoena or court
21 order so as to allow sufficient time for the Designating Party to challenge or resist such
22 production or disclosure.

23 14. No "Confidential" or "Highly Confidential" document(s) shall be filed with the
24 Court unless counsel secures a Court Order allowing the filing of the document(s) under seal, in
25 compliance with the requirements of Local Rule 5-4.2(b)(3) and 79-5.1. An application to file a
26 document under seal shall be served on opposing counsel, and on the person or entity that has
27 custody and control of the document, if different from opposing counsel. If opposing counsel, or
28 the person or entity who has custody and control of the document, wishes to oppose the

1 application, he/she must contact the chambers of the judge who will rule on the application, to
2 notify the judge's staff that an opposition to the application will be filed.

3 15. For any document, paper, exhibit, transcript or other thing filed or lodged with the
4 Court, or any portion thereof ("Record"), containing Confidential Material and/or Highly
5 Confidential Material that the Court finds may be filed under seal, the Party filing such Record
6 with the Court shall comply with the requirements of Local Rule 5-4.2(b)(3) and 79-5.1,
7 including placing the confidential portion in a sealed envelope or other appropriately sealed
8 container, with a label indicating the title of this litigation, the nature of the contents, the
9 Confidential Legend and/or Highly Confidential Legend, and a statement which reads
10 substantially as follows: "THIS ENVELOPE CONTAINS CONFIDENTIAL INFORMATION
11 [AND/OR] HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY INFORMATION AND
12 IS SEALED PURSUANT TO THE [DATE OF THIS PROTECTIVE ORDER] ORDER OF
13 THE COURT AT THE REQUEST OF [REQUESTING PARTY]. IT IS NOT TO BE OPENED
14 NOR ARE THE CONTENTS THEREOF TO BE DISPLAYED OR REVEALED TO ANY
15 PERSONS EXCEPT BY ORDER OF THE COURT OR PURSUANT TO CONSENT OF THE
16 PARTIES CLAIMING CONFIDENTIALITY."

17 16. The foregoing is without prejudice to the right of any Party: (a) to present a
18 motion to the Court under Federal Rule of Civil Procedure 26(c) for a further protective order
19 relating to any Protected Material or relating to any discovery in this litigation; (b) to object to
20 the production of documents it considers not subject to discovery; (c) to apply to the Court for an
21 order compelling production of documents or modification of this Order or for any order
22 permitting disclosure of Protected Material beyond the terms of this Order; or (d) to apply to the
23 Court for an order deeming Disclosure or Discovery Material not "Confidential" or "Highly
24 Confidential."

25 17. If a Producing Party inadvertently or unintentionally produces to a Receiving
26 Party any documents or information subject to a claim of privilege or immunity from discovery
27 (including but not limited to attorney-client privilege, work product immunity, and immunities
28 created by federal or state statute or regulation), the Producing Party shall, within fifteen

1 (15) days of the discovery of the inadvertent production, give notice to the Receiving Party in
2 writing of the Producing Party's claim of privilege or immunity from discovery. Thereafter, the
3 Receiving Party shall immediately return to the Producing Party the original and all copies of the
4 restricted materials, including copies of the restricted materials disseminated to other persons by
5 the Receiving Party. The Receiving Party will be deemed to have notice that material is
6 restricted if the Party reasonably should recognize the material is privileged or protected from
7 discovery, or upon written notice by the Producing Party. Such inadvertent or unintentional
8 disclosure shall not be deemed a waiver in whole or in part of the Producing Party's claim of
9 privilege or immunity from discovery either as to specific documents and information disclosed
10 or on the same or related subject matter. In the event that the Receiving Party disagrees with the
11 Producing Party's claim of privilege or immunity from discovery, then the Receiving Party shall
12 notify the Producing Party within five (5) business days of receipt of the Producing Party's
13 written notice of claim of privilege, and shall set forth the precise grounds upon which the
14 Receiving Party's position rests. If the parties cannot resolve the matter, then the dispute will be
15 presented to the Court by motion or ^{application.} ~~otherwise~~. During the pendency of any such motion, the
16 Receiving Party shall not copy, distribute, or otherwise use in any manner the disputed
17 documents or information, and shall instruct all persons to whom the Receiving Party has
18 disseminated a copy of the documents or information that the documents or information are
19 subject to this Order and may not be copied, distributed, or otherwise used pending the motion
20 and further notice from the Court.

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21 18. If a Producing Party inadvertently or unintentionally produces to a Receiving
22 Party any document or information that the Producing Party failed to designate as "Confidential"
23 or "Highly Confidential," the Producing Party shall, within thirty (30) days of the discovery of
24 the inadvertent production, give notice to the Receiving Party in accordance with the procedure
25 above for reclaiming inadvertently produced privileged documents. The retrieving Party shall
26 re-produce such documents or material, designating them "Confidential" or "Highly
27 Confidential" as described in paragraph 1 above, as soon as possible after retrieval and no later
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1 than ten (10) days after retrieval. As used in this Order, an act is “timely” if it does not unduly
2 prejudice another Party.

3 19. If the Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this Order, the
5 Receiving Party shall immediately notify in writing the Designating Party of the unauthorized
6 disclosure and use its best efforts to retrieve all copies of the Protected Materials. The Receiving
7 Party shall inform the person or persons to whom the unauthorized disclosures were made of the
8 terms of this Order and request that such person or persons execute the “Acknowledgement And
9 Agreement To Be Bound” (Exhibit A) to maintain the protections for material that was
10 improperly disclosed.

11 20. All Disclosure or Discovery Materials shall be used solely for the purpose of this
12 litigation. Except by consent of the Producing Party or order of the Court, such discovery
13 materials shall not be used by any Party other than the Producing Party for any outside purpose,
14 including, without limitation, any outside business or outside commercial purpose. No
15 duplications of documents stamped “Confidential” or “Highly Confidential” shall be made
16 except by counsel to provide working copies and for filing in Court under seal.

17 21. The protections conferred by this Order cover not only Protected Material, but
18 also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or
19 compilations thereof, plus testimony, conversations, or presentations by Parties or Counsel to or
20 in Court or in other settings that might reveal Protected Material. All notes, memoranda, reports
21 and other written communications that reveal or discuss information contained in Protected
22 Materials shall be given the same protections under this Order as though they were designated
23 Protected Materials.

24 22. The provisions of this Order shall not terminate at the conclusion of this lawsuit.
25 Within 60 days after final conclusion of all aspects of this litigation, documents stamped
26 “Confidential” or “Highly Confidential,” and all copies of same (other than exhibits of record)
27 either shall be destroyed or returned to the Producing Party. In the event that documents
28 stamped “Confidential” or “Highly Confidential” are produced in electronic form, or are put into

1 electronic form by the Receiving Party with the consent of the Producing Party, then the
2 Receiving Party shall delete all electronic copies of stamped confidential documents from all
3 computer systems, disks, and other electronic medium and devices. All counsel of record shall
4 make certification of compliance herewith and shall deliver the same to counsel for the Party
5 who produced the documents not more than 120 days after final termination of this litigation.

6 23. The final determination or settlement of this action as to any or all parties shall
7 not relieve any person who has received Protected Material from the obligations imposed by this
8 Order, and this Court shall retain jurisdiction after such final determination or settlement to
9 enforce the provisions of this Order. All persons subject to the terms of this Order agree that this
10 Court shall retain jurisdiction over them for the purpose of enforcing this Order.

11 24. The Court may modify this Order for good cause, in the interests of justice or for
12 public policy reasons on its own initiative.

13 **III. EXPERTS AND CONSULTANTS**

14 Prior to disclosing any Protected Material to any outside experts or consultants retained
15 in connection with this litigation who are currently employees, officers, directors, contractors,
16 subcontractors or consultants of any entity that is presently engaged in the research,
17 development, manufacture or sale of any Vitamin E supplement, or any other supplement, that
18 does now or may in the future compete with Defendant, Plaintiff or his counsel shall promptly so
19 notify the Producing Party, including with such notification: (i) the name of the person; (ii) the
20 present employer and title of the person; (iii) an up-to-date curriculum vitae of the person; (iv) a
21 listing of consulting projects undertaken by the expert or consultant within the last four (4) years;
22 and (v) an executed copy of the "Agreement to Be Bound by Protective Order" (Exhibit A); and
23 (vi) a current certification that the expert or consultant is not a current officer, director,
24 contractor or employee of a Party or of a competitor of a Party, nor anticipated at the time of the
25 certification to become an officer, director, contractor, or employee of a Party or a competitor of
26 a Party.

27 1. Within five (5) business days of receipt of the information described in the
28 paragraph above, the Producing Party may object in writing to the proposed outside expert or

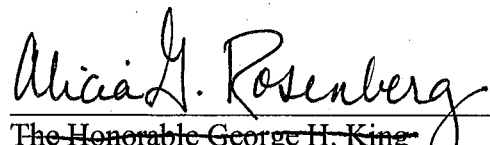
1 consultant for good cause. In the absence of an objection during the five-day period, the person
2 shall be deemed approved under this Stipulated Protective Order. If objection to disclosure is
3 made within the time required, the parties shall meet and confer via telephone or in person within
4 five (5) business days following the objection and attempt in good faith to resolve the dispute on
5 an informal basis. If the dispute is not resolved, the Party objecting to the disclosure will have
6 five (5) business days from the date of the meet and confer to seek relief from the Court. If relief
7 is not sought from the Court within that time, the objection shall be deemed withdrawn. If relief
8 is sought, designated materials shall not be disclosed to the expert or consultant in question until
9 the objection is resolved by the Court.

10 2. For purposes of this section, "good cause" shall include, but not necessarily be
11 limited to, an objectively reasonable concern that the expert or consultant, or someone associated
12 therewith, will, advertently or inadvertently, use or disclose confidential information outside of
13 this litigation, or constitute an unreasonable risk thereof. Experts or consultants authorized to
14 receive Protected Material under this section shall not be a current officer, director, contractor or
15 employee of a Party or of a competitor of a Party, nor anticipated at the time of retention to
16 become an officer, director, contractor, or employee of a Party or a competitor of a Party.

17 3. The parties agree that the terms of Section III are subject to revision as this
18 litigation proceeds. The parties shall meet and confer in good faith as to any proposed
19 revision(s) in this Section. Any revisions to this Order shall be effective only upon entry by the
20 Court of a modified stipulated protective order.

21 **IT IS SO ORDERED.**

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23
24 Dated: August 2, 2012


~~The Honorable George H. King~~
~~United States District Court Judge~~

ALICIA G. ROSENBERG
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, with an address of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order issued by the United States District Court for the Central District of California on _____, 201_, in the case captioned *Bohn v. Pharmavite, LLC*, 2:11-cv-10430-GHK-AGR.

I agree to comply with and to be bound by all the terms of the Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt of court.

I will not utilize any stamped confidential document or other information subject to the Protective Order for any purpose other than this litigation. I further affirm that I will not reveal the confidential information to, nor discuss it with, anyone, except in accordance with the terms of the Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

At the termination of this litigation, I will return all documents marked "Confidential," or "For Counsel Only," or "Highly Confidential," as well as any copies, summaries or abstracts of them, and documents related to them, whether in hard copy, electronic, or digitized format, to the attorney providing confidential materials to me.

I hereby appoint [NAME] of [FIRM NAME AND ADDRESS] as my agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Executed on _____, 201_, at [CITY AND STATE].

Signature: _____