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NOTE: CHANGES MADE BY THE COURT

7 Attorneys for Defendants Bert Tolbert,
 8 Patricia Waggoner and Kenneth
 9 Waggoner

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11 MARIO SALAS, et al.,
 12 Plaintiffs,
 13 v.
 14 INTERNATIONAL UNION OF
 15 OPERATING ENGINEERS, et al.,
 16 Defendants.

Case No. 2:12-cv-10506 DDP (JPRx)
 Judge: Hon. Dean D. Pregerson
 Magistrate: Hon. Jean P. Rosenbluth

STIPULATED PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

19 Discovery in this action will involve the parties' production of confidential,
 20 proprietary, or private information for which special protection from public
 21 disclosure and from use for any purpose other than prosecuting this litigation is
 22 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 23 enter the following Stipulated Protective Order. The parties acknowledge that this
 24 Order does not confer blanket protections on all disclosures or responses to
 25 discovery and that the protection it affords from public disclosure and use extends
 26 only to the limited information or items that are entitled to confidential treatment
 27 under the applicable legal principles. The parties further acknowledge, as set forth

1 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
2 file confidential information under seal; Civil Local Rule 79-5 sets forth the
3 procedures that must be followed and the standards that will be applied when a
4 party seeks permission from the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

6 This action involves and will necessitate the parties' disclosure of certain
7 confidential, private and/or proprietary information for which special protection
8 from public disclosure and from use for any purpose other than prosecution of this
9 action is warranted. Such confidential and proprietary materials and information
10 consist of, among other things, documents reflecting personal identifying
11 information and private financial information of trust fund plan participants and
12 beneficiaries, personal financial information belonging to plaintiffs and the
13 individual defendants, payroll and personnel records of certain employees of the
14 trust funds, Local 12 and/or Operating Engineers Funds, Inc. ("OEFI"), private
15 financial information, including accounting records, financial statements, bank
16 records, audit reports, and tax returns of Local 12, trust funds and OEFI, as well as
17 written discovery responses and deposition testimony referring or relating to such
18 matters — all of which information is generally unavailable to the public and/or
19 may be privileged or otherwise protected from disclosure under state or federal
20 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
21 flow of information, to facilitate the prompt resolution of disputes over
22 confidentiality of discovery materials, to adequately protect the private information
23 of both the parties and third parties and such other information as the parties are
24 entitled to keep confidential, to ensure that the parties are permitted reasonable and
25 necessary uses of such material in preparation for and in the conduct of trial, to
26 address their handling at the end of the litigation, and serve the ends of justice, a
27 protective order for such information is justified in this matter. It is the intent of the

1 parties that information will not be designated as confidential for tactical reasons
2 and that nothing be so designated without a good faith belief that it has been
3 maintained in a confidential, non-public manner, and there is good cause why it
4 should not be part of the public record of this case.

5 **2. DEFINITIONS**

6 2.1 Action: this pending federal law suit, entitled *Mario Salas et al.*
7 *v. International Union of Operating Engineers et al.*, Central District Case
8 No. 2:12-cv-10506 DDP (VBKx).

9 2.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information
12 (regardless of how it is generated, stored or maintained) or tangible things
13 that qualify for protection under Federal Rule of Civil Procedure 26(c), and
14 as specified above in the Good Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as
16 well as their support staff).

17 2.5 Designating Party: a Party or Non-Party that designates
18 information or items that it produces in disclosures or in responses to
19 discovery as “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information,
21 regardless of the medium or manner in which it is generated, stored, or
22 maintained (including, among other things, testimony, transcripts, and
23 tangible things), that are produced or generated in disclosures, depositions or
24 in response to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a
26 matter pertinent to the litigation who has been retained by a Party or its
27 counsel to serve as an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this
2 Action. House Counsel does not include Outside Counsel of Record or any
3 other outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation,
5 association, or other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees
7 of a party to this Action but are retained to represent or advise a party to this
8 Action and have appeared in this Action on behalf of that party or are
9 affiliated with a law firm which has appeared on behalf of that party, and
10 includes support staff.

11 2.11 Party: any party to this Action, including all of its officers,
12 directors, employees, consultants, retained experts, and Outside Counsel of
13 Record (and their support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure
15 or Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing
18 exhibits or demonstrations, and organizing, storing, or retrieving data in any
19 form or medium) and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that
21 is designated as “CONFIDENTIAL.”

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees
8 otherwise in writing or a court order otherwise directs. Final disposition shall be
9 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
10 with or without prejudice; and (2) final judgment herein after the completion and
11 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
12 including the time limits for filing any motions or applications for extension of time
13 pursuant to applicable law.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under
17 this Order must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. The Designating Party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify so that other portions of the material, documents,
21 items, or communications for which protection is not warranted are not swept
22 unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an improper
25 purpose (e.g., to unnecessarily encumber the case development process or to
26 impose unnecessary expenses and burdens on other parties) may expose the
27 Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
7 under this Order must be clearly so designated before the material is disclosed or
8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
14 contains protected material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents available for inspection
18 need not designate them for protection until after the inspecting Party has indicated
19 which documents it would like copied and produced. During the inspection and
20 before the designation, all of the material made available for inspection shall be
21 deemed "CONFIDENTIAL." After the inspecting Party has identified the
22 documents it wants copied and produced, the Producing Party must determine
23 which documents, or portions thereof, qualify for protection under this Order. Then,
24 before producing the specified documents, the Producing Party must affix the
25 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
26 portion or portions of the material on a page qualifies for protection, the Producing
27 Party also must clearly identify the protected portion(s) (e.g., by making

1 appropriate markings in the margins).

2 (b) for testimony given in depositions, the Designating Party may:

3 i. within 20 days following receipt of the deposition transcript,
4 notify the deposition reporter and other counsel of record in writing of the
5 testimony or portions of the deposition transcript designated as
6 “CONFIDENTIAL.” Depositing the written notice in the United States mail
7 within such 20 days shall be deemed timely compliance with this provision; or

8 ii. identify on the record, before the close of the deposition, all
9 “CONFIDENTIAL” testimony, by specifying all portions of the testimony that
10 qualify as Protected Material; or

11 iii. designate the entirety of the testimony at the deposition as
12 “CONFIDENTIAL” (before the deposition is concluded) with the right to identify
13 more specific portions of the testimony as to which protection is sought within 20
14 days following receipt of the deposition transcript.

15 (c) for information produced in some form other than documentary
16 and for any other tangible items, that the Producing Party affix in a prominent
17 place on the exterior of the container or containers in which the information is
18 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
19 information warrants protection, the Producing Party, to the extent practicable,
20 shall identify the protected portion(s).

21
22 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate
23 qualified documents, information or items “CONFIDENTIAL” does not waive the
24 Designating Party’s right to secure protection under this Order for such material. In
25 the event that any Disclosure or Discovery Material subject to a
26 “CONFIDENTIAL” designation is inadvertently produced without such
27 designation, the Party that inadvertently produced the material shall give written
28 notice of such inadvertent production within twenty (20) days of discovery of the

1 inadvertent production, together with a further designated copy of the subject
2 Protected Material. Upon receipt of such an Inadvertent Production Notice, any
3 Receiving Party that received the inadvertently produced material shall promptly
4 destroy the inadvertently produced undesignated Protected Material and retain only
5 the designated version. This provision is not intended to apply to the inadvertent
6 production of any document, testimony, or information which is privileged or
7 otherwise protected subject to paragraph 11 below.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may
10 challenge a designation of confidentiality at any time that is consistent
11 with the Court's Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the
13 dispute resolution process under Local Rule 37.1 et seq.

14 6.3 The burden of persuasion in any such challenge proceeding shall be
15 on the Designating Party. Frivolous challenges, and those made for an improper
16 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
17 parties) may expose the Challenging Party to sanctions. Unless the Designating
18 Party has waived or withdrawn the confidentiality designation, all parties shall
19 continue to afford the material in question the level of protection to which it is
20 entitled under the Producing Party's designation until the Court rules on the
21 challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that
24 is disclosed or produced by another Party or by a Non-Party in connection with
25 this Action only for prosecuting, defending, or attempting to settle this Action.
26 Such Protected Material may be disclosed only to the categories of persons and
27 under the conditions described in this Order. When the Action has been

1 terminated, a Receiving Party must comply with the provisions of section 13
2 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party,
8 a Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action; the officers, directors, and
13 employees (including House Counsel) of the Receiving Party to whom disclosure
14 is reasonably necessary for this Action;

15 (b) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (c) the court and its personnel;

19 (d) court reporters and their staff;

20 (e) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) the author or recipient of a document containing the information or
24 a custodian or other person who otherwise possessed or knew the information;

25 (g) during their depositions, witnesses, and attorneys for witnesses, in
26 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
27 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)

1 they will not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
3 agreed by the Designating Party or ordered by the court. Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal Protected Material may
5 be separately bound by the court reporter and may not be disclosed to anyone
6 except as permitted under this Stipulated Protective Order; and

7 (h) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
10 IN OTHER LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this Action as
13 “CONFIDENTIAL,” that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification
15 shall include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or
17 order to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this Protective Order. Such notification shall
19 include a copy of this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated in
24 this action as “CONFIDENTIAL” before a determination by the court from which
25 the subpoena or order issued, unless the Party has obtained the Designating
26 Party’s permission or a court so orders. The Designating Party shall bear the
27 burden and expense of seeking protection in that court of its confidential material

1 and nothing in these provisions should be construed as authorizing or encouraging
2 a Receiving Party in this Action to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a
6 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
7 produced by Non-Parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be
9 construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party's confidential information in its possession, and the Party is
12 subject to an agreement with the Non-Party not to produce the Non-Party's
13 confidential information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-
15 Party that some or all of the information requested is subject to a confidentiality
16 agreement with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated
18 Protective Order in this Action, the relevant discovery request(s), and a reasonably
19 specific description of the information requested; and

20 (3) make the information requested available for inspection by the
21 Non-Party, if requested.

22 (c) If the Non-Party fails to seek a protective order from this court within
23 21 days of receiving the notice and accompanying information, the Receiving
24 Party may produce the Non-Party's confidential information responsive to the
25 discovery request. If the Non-Party timely seeks a protective order, the Receiving
26 Party shall not produce any information in its possession or control that is subject
27 to the confidentiality agreement with the Non-Party before a determination by the

1 court unless otherwise ordered. Absent a court order to the contrary, the Non-
2 Party shall bear the burden and expense of seeking protection in this court of its
3 Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized
7 under this Stipulated Protective Order, the Receiving Party must immediately (a)
8 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
9 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
10 the person or persons to whom unauthorized disclosures were made of all the terms
11 of this Order, and (d) request such person or persons to execute the
12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
13 A.

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in Federal
19 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
20 whatever procedure may be established in an e-discovery order that provides for
21 production without prior privilege review.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in

1 this Stipulated Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the material covered by this Protective
3 Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material
6 may only be filed under seal pursuant to a court order authorizing the sealing of
7 the specific Protected Material at issue. If a Party's request to file Protected
8 Material under seal is denied by the court, then the Receiving Party may file the
9 information in the public record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in paragraph 4, within
12 60 days of a written request by the Designating Party, each Receiving Party must
13 return all Protected Material to the Producing Party or destroy such material. As
14 used in this subdivision, "all Protected Material" includes all copies, abstracts,
15 compilations, summaries, and any other format reproducing or capturing any of
16 the Protected Material. Whether the Protected Material is returned or destroyed,
17 the Receiving Party must submit a written certification to the Producing Party
18 (and, if not the same person or entity, to the Designating Party) by the 60 day
19 deadline that (1) identifies (by category, where appropriate) all the Protected
20 Material that was returned or destroyed and (2) affirms that the Receiving Party
21 has not retained any copies, abstracts, compilations, summaries or any other
22 format reproducing or capturing any of the Protected Material. Notwithstanding
23 this provision, Counsel are entitled to retain an archival copy of all pleadings,
24 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
25 correspondence, deposition and trial exhibits, expert reports, attorney work
26 product, and consultant and expert work product, even if such materials contain
27 Protected Material. Any such archival copies that contain or constitute Protected

1 Material remain subject to this Protective Order as set forth in Section 4
2 (DURATION).

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5 14. REMEDIES

6 Any violation of this Order may be punished by any and all appropriate
7 measures including, without limitation, contempt proceedings and/or monetary
8 sanctions.

9
10 IT IS SO STIPULATED BY ALL PARTIES, THROUGH THEIR RESPECTIVE
11 COUNSEL OF RECORD.

12
13 Dated: January 5, 2016

By: /s/ H. Scott Leviant
BERNS WEISS LLP
Jeffrey K. Berns
H. Scott Leviant
Lee A. Weiss
Albert G. Lum

LAW OFFICES OF J. MARK
MOORE
J. Mark Moore

Attorneys for Plaintiffs Mario Salas, *et al.*

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17
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19
20 Dated: August 14, 2015

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

By: /s/ Barbara S. Van Ligten
Steven D. Atkinson
Barbara S. Van Ligten

Attorneys for Defendants Michael
Crawford, Mike Gomez, Paul Von Berg,
Bruce Cooksey, Jim Hulse and Mike Prlish

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27 Dated: September 1, 2015

HILL, FARRER & BURRILL LLP

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By: /s/ E. Sean McLoughlin
James A. Bowles
E. Sean McLoughlin
Attorneys for Defendant C.W. Poss

Dated: August 18, 2015 MCLEOD & WITHAM LLP

By: /s/ David McLeod
David McLeod
Jeffrey R. Witham
Attorneys for Defendants William Waggoner, Mickey J. Adams, Dan Billy, Larry Davison, Dan Hawn, Ron Sikorski, and Operating Engineers Funds, Inc.

Dated: August 18, 2015 PARKER MILLIKEN CLARK O'HARA & SAMUELIAN APC

By: /s/ Michael B. Mellema
Richard Clark
Michael B. Mellema
Attorneys for Defendant Burt Tolbert Patricia M. Waggoner and Kenneth D. Waggoner

Dated: August 18, 2015 CADDEN AND FULLER, LLP

By: /s/ Andrew M. Sussman
Andrew M. Sussman
Attorneys for Defendant Don Bourguignon, Kenneth Bourguignon and Walt Elliot

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: January 13, 2016

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By: Jan Brenkblatt
Hon. United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Central District of California on [date] in the case of *Mario Salas et al. v.*
International Union of Operating Engineers et al., Central District Case No. 2:12-
cv-10506 DDP (JPRx). I agree to comply with and to be bound by all the terms of
this 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.
I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this 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. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective
Order.
Date: _____
City and State where sworn and signed: _____

1 Printed name: _____

2 Signature: _____

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