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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INSOMNIAC, INC., a California corporation; and PASQUALE ROTELLA, an individual,

Plaintiffs,

v.

D DONNIE PRODUCTIONS, INC., formerly known as DISCO PRODUCTIONS, INC., a Louisiana corporation; JAMES D. ESTOPINAL, JR., aka DISCO DONNIE, an individual; and DOES 1 through 10, inclusive,

Defendants.

Case No. CV 13-02284-ODW(MANx)

**PROTECTIVE ORDER ENTERED  
PURSUANT TO THE PARTIES'  
STIPULATION**

DISCO PRODUCTIONS, INC., a Florida corporation and JAMES DONALD ESTOPINAL, an individual,

Counterclaim Plaintiffs,

v.

PASQUALE ROTELLA, an individual and INSOMNIAC, INC., a California corporation,

Counterclaim Defendants.

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on  
2 the parties' [Proposed] Stipulated Protective Order Governing Confidential  
3 Information ("Stipulation") filed on October 29, 2013, the terms of the protective  
4 order to which the parties have agreed are adopted as a protective order of this  
5 Court (which generally shall govern the pretrial phase of this action) except to the  
6 extent, as set forth below, that those terms have been substantively modified by the  
7 Court's amendment of paragraph V. A. of the Stipulation.

8 The parties are expressly cautioned that the designation of any information,  
9 document, or thing as Confidential, Highly Confidential – Attorneys' Eyes Only, or  
10 other designation(s) used by the parties, does not, in and of itself, create any  
11 entitlement to file such information, document, or thing, in whole or in part, under  
12 seal. Accordingly, reference to this Protective Order or to the parties' designation  
13 of any information, document, or thing as Confidential, Highly Confidential –  
14 Attorneys' Eyes Only, or other designation(s) used by the parties, is wholly  
15 insufficient to warrant a filing under seal.

16 There is a strong presumption that the public has a right of access to judicial  
17 proceedings and records in civil cases. In connection with non-dispositive motions,  
18 good cause must be shown to support a filing under seal. The parties' mere  
19 designation of any information, document, or thing as Confidential, Highly  
20 Confidential – Attorneys' Eyes Only, or other designation(s) used by parties, does  
21 not -- **without the submission of competent evidence, in the form of a**  
22 **declaration or declarations, establishing that the material sought to be filed**  
23 **under seal qualifies as confidential, privileged, or otherwise protectable** --  
24 constitute good cause.

25 Further, if sealing is requested in connection with a dispositive motion or  
26 trial, then compelling reasons, as opposed to good cause, for the sealing must be  
27 shown, and the relief sought shall be narrowly tailored to serve the specific interest  
28 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th

1 Cir. 2010). For each item or type of information, document, or thing sought to be  
2 filed or introduced under seal in connection with a dispositive motion or trial, the  
3 party seeking protection must articulate compelling reasons, supported by specific  
4 facts and legal justification, for the requested sealing order. **Again, competent**  
5 **evidence supporting the application to file documents under seal must be**  
6 **provided by declaration.**

7 Any document that is not confidential, privileged, or otherwise protectable in  
8 its entirety will not be filed under seal if the confidential portions can be redacted.  
9 If documents can be redacted, then a redacted version for public viewing, omitting  
10 only the confidential, privileged, or otherwise protectable portions of the document,  
11 shall be filed. Any application that seeks to file documents under seal in their  
12 entirety should include an explanation of why redaction is not feasible.

13 Notwithstanding any other provision of this Protective Order, in the event  
14 that this case proceeds to trial, all information, documents, and things discussed or  
15 introduced into evidence at trial will become public and available to all members of  
16 the public, including the press, unless sufficient cause is shown in advance of trial  
17 to proceed otherwise.

## 18 **TERMS OF PROTECTIVE ORDER**

### 19 **I. SCOPE**

20 This **Protective Order** shall apply to and govern documents, information, and  
21 other matter produced or furnished during the course of discovery in the above-  
22 captioned proceedings pursuant to the Federal Rules of Civil Procedure, the Local  
23 Rules of the above-entitled Court (“Local Rules”), or otherwise, to the extent such  
24 materials are designated as constituting or containing Confidential Information  
25 pursuant to Section III of this **Protective Order**. This **Protective Order** does not  
26 affect the enforceability of any existing confidentiality agreements, confidentiality  
27 provisions, or protective orders governing documents, information, or other matter  
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1 produced in connection with this Action, including, but not limited to,  
2 confidentiality agreements, protective orders, or restrictions on the dissemination of  
3 materials collected or created in the course of other litigation.

## 4 **II. DEFINITIONS**

5 A. “Action” shall refer to the above-entitled proceedings in the  
6 United States District Court for the Central District of California.

7 B. “Designating Party” shall mean a party or third party that  
8 designates information as confidential pursuant to Section III below.

9 C. “Furnishing Party” shall mean a party to the Action, or a third  
10 party subject to subpoena, on behalf of which documents, things, or information are  
11 furnished or produced in connection with the Action.

12 D. “Receiving Party” shall mean a party to the Action to which  
13 documents, things, or information are furnished or produced in connection with the  
14 Action.

15 E. “Confidential Information” shall mean confidential or  
16 proprietary business, personal, or technical information that is not generally known  
17 and that the Designating Party would not normally reveal to third parties, or would  
18 cause or require third parties to maintain in confidence, that is designated with a  
19 legend set forth in Section III hereof.

20 F. “Counsel” shall mean counsel of record for a party to this  
21 Action and secretarial, clerical, and paralegal personnel assisting such counsel.  
22 “Counsel” shall not include persons engaged or retained by or on behalf of any  
23 party as an Expert Consultant.

24 G. “Expert Consultant” shall mean any person other than Counsel  
25 who is retained or sought to be retained by or on behalf of a party to the Action to  
26 advise and assist in the preparation and presentation of the party’s case. For  
27 purposes of this **Protective Order**, Expert Consultants shall include individuals  
28 retained as experts, whether or not designated to testify at trial.

1 **III. DESIGNATION OF INFORMATION**

2 A. Documents, information, and other matter produced or furnished  
3 during the course of the Action, including, without limitation, documents,  
4 information, and matter produced in response to requests for production of  
5 documents, to interrogatories, to requests for admissions, to subpoenas, or during  
6 depositions, may be designated as constituting or containing Confidential  
7 Information, prior to producing or furnishing the documents or things, by placing  
8 on each page and each thing to which the designation applies a legend stating  
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
10 ONLY.” The Designating Party shall make this designation based on its good faith  
11 determination that such designation applies.

12 B. For information produced in some form other than documentary  
13 and for any other physical items, the Designating Party shall affix in a prominent  
14 place on the exterior of the container or containers in which the information or item  
15 is stored the legend stating “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL  
16 — ATTORNEYS’ EYES ONLY.”

17 C. The parties agree Confidential Information may include, but is  
18 in no way limited to, non-public financial information, accounting records, financial  
19 and business models, and trade secrets. Pursuant to Section VII below, any party’s  
20 inadvertent failure to mark such materials as constituting or containing Confidential  
21 Information shall not constitute a waiver of its claim to confidentiality.

22 D. If a third party produces documents or information of any other  
23 kind pursuant to a subpoena or otherwise, all such documents shall be provisionally  
24 designated as Confidential Information subject to the provisions of **paragraph IV.**  
25 B. (“Confidential”), until fifteen (15) days after all of the parties to the Action have  
26 received the documents, unless the parties otherwise agree in writing. If a party to  
27 the Action believes that any documents or information produced by a third party  
28 constitute or contain Confidential Information of the party or of its past or present

1 affiliates, employees, or customers, the party to the Action may designate it as  
2 constituting or containing Confidential Information within fifteen (15) days of  
3 receipt of the information by notifying the other parties of the documents or  
4 information it deems to constitute or contain Confidential Information, and re-  
5 producing the pages constituting or containing Confidential Information with one of  
6 the legends set forth in paragraph III. A. Thereafter, the documents or information  
7 will no longer be deemed Confidential Information for purposes of this Protective  
8 Order, except to the extent so designated within such fifteen (15)-day period.

9 E. For information presented orally at deposition, a confidentiality  
10 designation may be made on the record through a request that specific information  
11 provided in response to questions be designated by the deposition reporter as  
12 “Confidential” or “Highly Confidential — Attorneys’ Eyes Only”; such a  
13 designation made on the record shall be effective immediately. Additionally, a  
14 party or third party may designate deposition information as “Confidential” or  
15 “Highly Confidential —Attorneys’ Eyes Only” by giving written notice (via e-mail,  
16 letter, or otherwise) transmitted to all parties and to the court reporter on or before  
17 the date that the signed transcript and/or errata are due. Those portions of the  
18 transcript of a deposition session for which no designation was made on the record  
19 shall be provisionally designated as “Confidential” and subject to the provisions of  
20 **paragraph IV. B.** until the date that the signed transcript and/or errata are due.  
21 Thereafter, the transcript will no longer be deemed Confidential Information for  
22 purposes of this Protective Order, except to the extent so designated at the  
23 deposition or in a written notice, by letter, e-mail, or otherwise, transmitted to all  
24 parties and the court reporter within the time specified above.

#### 25 **IV. DISCLOSURE OF CONFIDENTIAL INFORMATION**

26 A. Confidential Information shall be used solely for the purpose of  
27 conducting this Action and for no other purpose.  
28

1           B.     Confidential Information designated as “CONFIDENTIAL”  
2 may be disclosed to Counsel for the Receiving Party, including in-house counsel  
3 supervising this matter, and may be disclosed by Counsel for the Receiving Party to  
4 the following additional persons only:

- 5           (1)    The parties and the current and former employees of such  
6                parties (or their parent, subsidiary, or other affiliated entities)  
7                whose assistance Counsel requests for purposes of this  
8                litigation;
- 9           (2)    The Court, the jury, members of the staff of the Court, and other  
10               persons present during trial whose functions reasonably  
11               necessitate access to Confidential Information, subject to the  
12               procedures set forth in paragraphs V. A. through D., inclusive,  
13               hereof;
- 14           (3)    Qualified court reporters taking testimony in the above-  
15               captioned proceedings, and necessary stenographic and clerical  
16               personnel thereof;
- 17           (4)    Percipient witnesses at deposition, or in preparation for  
18               deposition testimony or trial, provided that such witnesses are  
19               not permitted to retain the Confidential Information following  
20               the preparation session or deposition;
- 21           (5)    Expert Consultants, and their employees, of the Receiving Party;
- 22           (6)    Non-technical jury or trial consulting services retained by  
23               Counsel for a party; and
- 24           (7)    The author of the document or the original source of the  
25               information, and those persons reasonably believed to have  
26               received the document or be knowledgeable about its contents in  
27               the ordinary course of business.

1 C. Confidential Information designated as “HIGHLY  
2 CONFIDENTIAL — ATTORNEYS’ EYES ONLY” may be disclosed to Counsel  
3 for the Receiving Party, including in-house counsel supervising this matter, and  
4 may be disclosed by Counsel for the Receiving Party to the following additional  
5 persons only:

- 6 (1) The Court, the jury, members of the staff of the Court, and other  
7 persons present during trial whose functions reasonably  
8 necessitate access to Confidential Information, subject to the  
9 procedures set forth in paragraphs V. A. through D., inclusive,  
10 hereof;
- 11 (2) Qualified court reporters taking testimony in the above-  
12 captioned proceedings, and necessary stenographic and clerical  
13 personnel thereof;
- 14 (3) Non-technical jury or trial consulting services retained by  
15 Counsel for a party; and
- 16 (4) The author of the document or the original source of the  
17 information, and those persons reasonably believed to have  
18 received the document or be knowledgeable about its contents in  
19 the ordinary course of business.

20 D. Confidential Information may be disclosed to those persons  
21 identified in paragraphs B. (5) through B. (6) and C. (3) above, provided that, prior  
22 to the disclosure of any Confidential Information to such persons: (a) the person  
23 shall have been informed of the confidential nature of all Confidential Information  
24 and the need to limit its use strictly to the purposes permitted herein, and shall agree  
25 to be bound by such restrictions; and (b) the person shall execute and deliver to the  
26 party providing such Confidential Information (who shall retain the executed  
27 original in perpetuity and promptly provide an executed copy to the opposing party  
28



1 upon request) the written “Non-Disclosure Agreement” in the form attached hereto  
2 as **Exhibit A**.

### 3 **V. USE OF CONFIDENTIAL INFORMATION**

4 A. In the event that any brief, memorandum, or other paper to be  
5 submitted to the Court by or on behalf of a Receiving Party contains Confidential  
6 Information of another party or third party, the Receiving Party shall **submit an**  
7 **application to** file the Confidential Information under seal, **which application**  
8 **shall comply with the requirements of Local Rule 79-5 and this Protective**  
9 **Order**. If the Furnishing Party is a third party **who or which** produced information  
10 pursuant to subpoena and designated some or all of that information as Confidential  
11 Information, the Receiving Party submitting the Confidential Information to the  
12 Court shall provide contemporaneous notice to the Furnishing Party that its  
13 Confidential Information has been submitted to the Court **with an application to**  
14 **file such Confidential Information** under seal.

15 B. All documents and copies of documents, made, drafted, or  
16 prepared by or on behalf of a Receiving Party that contain, memorialize, or  
17 summarize Confidential Information, including, without limitation, attorney notes  
18 or abstracts or other derivative documents or things, shall be handled as if they were  
19 designated pursuant to Section III hereof.

20 C. Counsel for Receiving Parties and Expert Consultants of  
21 Receiving Parties: (1) shall maintain all documents and things containing  
22 Confidential Information in a secure place that is reasonably inaccessible to anyone  
23 other than those persons authorized under this Protective Order to receive such  
24 information; and (2) shall take reasonable steps to ensure that such information is  
25 not disclosed to such other persons.

26 D. In the event of any disclosure of Confidential Information to any  
27 person or entity that is not permitted by the terms hereof, the Receiving Party that  
28 made the disclosure shall, upon learning of it:

- 1 (1) Immediately notify the person or entity to whom the disclosure  
2 was made that he, she or it has received Confidential  
3 Information subject to this Protective Order;
- 4 (2) Immediately make all reasonable efforts to preclude further  
5 dissemination or use by the person or entity to whom disclosure  
6 was made; and
- 7 (3) Immediately notify the Designating Party of the identity of the  
8 person(s) or entity to whom disclosure was made, the  
9 circumstances of the disclosure, and the steps taken to ensure  
10 against the dissemination or use of the information.

11 **VI. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
12 **IN OTHER LITIGATION**

13 A. If a Receiving Party is served by a non-party with a subpoena or  
14 an order issued in other litigation that would compel disclosure of any information  
15 or items designated in this Action as “CONFIDENTIAL” or “HIGHLY  
16 CONFIDENTIAL— ATTORNEYS’ EYES ONLY,” the Receiving Party must so  
17 notify the Designating Party, in writing no more than ten (10) court days after  
18 receiving the subpoena or order. Such notification must include a copy of the  
19 subpoena or court order.

20 B. The Receiving Party must also immediately inform in writing  
21 the non-party who caused the subpoena or order to issue in the other litigation that  
22 some or all the material covered by the subpoena or order is the subject of this  
23 Protective Order. In addition, the Receiving Party must deliver a copy of this  
24 Protective Order promptly to the non-party in the other action that caused the  
25 subpoena or order to issue.

26 C. The purpose of imposing these duties is to alert the interested  
27 parties to the existence of this Protective Order and to afford the Designating Party  
28 in this case an opportunity to try to protect its confidentiality interests in the court

1 from which the subpoena or order issued. The Designating Party shall bear the  
2 burdens and the expenses of seeking protection in that court of its confidential  
3 material – and nothing in these provisions should be construed as authorizing or  
4 encouraging a Receiving Party in this Action to disobey a lawful directive from  
5 another court.

6 **VII. INADVERTENT FAILURE TO DESIGNATE CONFIDENTIAL**  
7 **INFORMATION**

8 A. Inadvertent failure to designate documents or other information  
9 as Confidential Information at the time of production may be remedied by  
10 supplemental written notice. If such notice is given, the identified materials shall  
11 thereafter be fully subject to this Protective Order. A Furnishing Party's  
12 inadvertent or unintentional disclosure of Confidential Information, without the  
13 confidentiality designation, shall not be deemed a waiver in whole or in part of the  
14 Furnishing Party's claim of confidentiality, either as to the specific information  
15 disclosed or as to any other information relating thereto, on the same or related  
16 subject matter.

17 B. Any such inadvertently or unintentionally disclosed Confidential  
18 Information shall be designated as soon as reasonably possible after the Furnishing  
19 Party becomes aware of the inadvertent or unintentional disclosure. Counsel for the  
20 Furnishing Party with assistance of the Receiving Parties shall thereafter:

- 21 (1) Use reasonable efforts to retrieve all such particular documents,  
22 things, or information, and all copies thereof, from any persons  
23 not authorized by this **Protective** Order to receive such  
24 materials;
- 25 (2) Mark the particular documents, things, or information, and all  
26 copies thereof, with the appropriate legend as set forth in  
27 Section III; and  
28

1 (3) Treat the document, thing, or information, all copies thereof, and  
2 any notes or other documents incorporating such information in  
3 accordance with the designation.

#### 4 **VIII. CHALLENGES TO CONFIDENTIALITY DESIGNATION**

5 A. If a Receiving Party disputes a designation of information as  
6 constituting or containing Confidential Information or disputes the level of  
7 protection designated for the information, the Receiving Party may at any time  
8 notify the Designating Party in writing of the particular designation that is disputed  
9 and the basis for disputing the designation. Such notice shall be delivered in a  
10 separate writing so as to notify the Designating Party of the documents so  
11 challenged, and shall set forth with particularity the grounds for the challenge to  
12 each document or category of documents.

13 B. In the event written notice of an objection to the designation of  
14 information as constituting or containing Confidential Information is served  
15 pursuant to the preceding paragraph, the disputants shall first attempt to resolve  
16 such dispute in good faith on an informal basis. The Designating Party shall, within  
17 forty-five (45) days after such written notice was provided or such other time to  
18 which the disputing parties may agree: (1) re-produce any documents as required  
19 to reflect a changed designation agreed upon by the parties; and/or (2) as to those  
20 documents for which the dispute cannot be resolved, either (a) produce the  
21 documents as demanded in the Receiving Party's notice of objection, or (b) file a  
22 motion with the Court seeking a determination that the information was properly  
23 designated. The Designating Party shall carry the burden of persuasion on such a  
24 motion to establish that the information was properly designated. Prior to the  
25 determination of such motion, the Parties shall treat the disputed information as  
26 though it were properly designated.

27 C. Any party required to move this Court for relief under the  
28 provisions of **paragraph VIII. B.** as a result of written objections asserted by a

1 Receiving Party prior to the entry of this **Protective** Order shall have forty-five (45)  
2 days from the entry of this **Protective** Order to bring its motion.

3 **IX. INADVERTENT OR UNAUTHORIZED DISCLOSURE OF**  
4 **PRIVILEGED INFORMATION**

5 The inadvertent or unauthorized disclosure of information or documents that  
6 a Furnishing Party believes constitute, contain, or reflect information otherwise  
7 protected by the attorney-client privilege, the work product doctrine or any other  
8 privilege or immunity from discovery (“Privileged Information”), shall not  
9 constitute a waiver or estoppel with respect to such Privileged Information, or  
10 generally of any such privilege or immunity or other ground for withholding  
11 production to which the Furnishing Party or any other person would otherwise be  
12 entitled. Upon learning of any such inadvertent or unauthorized disclosure of  
13 Privileged Information, the Furnishing Party shall promptly provide notice to the  
14 Receiving Party directing that all copies of documents containing such Privileged  
15 Information be returned to the Furnishing Party or destroyed and barring any party  
16 from using or retaining those documents or any copies thereof in the action or  
17 otherwise. All parties receiving such notice shall immediately return all copies of  
18 the Privileged Documents described in the notice, shall delete such material from  
19 any litigation-support or other database, shall destroy all notes or other work  
20 product reflecting the contents of such material, and shall not use such Privileged  
21 Documents; provided, however, that any party receiving such notice, after returning  
22 the Privileged Documents, may move within thirty (30) days after receiving such  
23 notice and on reasonable notice, and on grounds other than the inadvertent or  
24 unauthorized disclosure of such documents, for an order challenging the  
25 designation of such documents as Privileged Documents. If, and only if, the party  
26 receiving notice of inadvertent or unauthorized disclosure of Privileged Documents  
27 elects to move for such an order, that party shall be permitted to keep only one copy  
28 of the Privileged Document for the sole purpose of **submitting** such copy with the

1 Court **for filing** under seal when making its motion. The parties agree that  
2 permission to keep the one copy for the sole purpose of filing it with the Court  
3 under seal shall not be grounds for arguing that the document is not privileged or  
4 that any privilege was waived. The parties agree that the terms in this Section do  
5 not in any way limit or alter the parties' existing obligations under the applicable  
6 law.

## 7 **X. CONCLUSION OF LITIGATION**

8 A. No later than three (3) months after the final termination of the  
9 Action, including the exhaustion of any appeals and cross-appeals and requests for  
10 discretionary review, each person or party subject to the terms of this Protective  
11 Order shall either: (1) return all Confidential Information produced by other parties  
12 to each respective Furnishing Party (except to the extent such designated  
13 information is maintained on electronic media and cannot be returned, in which  
14 case such designated information shall be erased or otherwise destroyed); or  
15 (2) destroy all Confidential Information produced by other parties. Nothing herein  
16 shall obligate any person or party to destroy: (i) attorney work product, including,  
17 without limitation, attorney notes or memos and deposition summaries; (ii) any  
18 transcript of any deposition, hearing, or trial proceeding; or (iii) any pleading or  
19 paper served on another party or filed with the Court in the Action.

20 B. Notwithstanding the foregoing, a Receiving Party shall be  
21 permitted to designate, in writing and no later than one (1) month after the final  
22 termination of the Action, any Confidential Information it believes, in good faith, is  
23 necessary for its counsel to maintain after the termination of the litigation for  
24 purposes of reference and use in the event of further disputes or litigation between  
25 the parties. Upon giving this notice, the Receiving Party may keep one (1) copy of  
26 any such designated Confidential Information, subject to the on-going protections  
27 of this Protective Order. If any disputes arise out of such designations, the  
28 disputants shall attempt to resolve such disputes in good faith on an informal basis.

1 C. This Court shall retain jurisdiction over the Action following its  
2 termination (whether by judgment, settlement, or otherwise) for the purpose of  
3 enforcing this Protective Order.

4 **XI. AMENDMENTS OR MODIFICATIONS**

5 A. This Protective Order may be amended by agreement of counsel  
6 for the parties to this **Protective** Order and approval of the Court in the form of a  
7 stipulation that shall be filed with the Court. Any party may, on motion and for  
8 good cause shown, apply to the Court for modification of this Protective Order.

9 B. This Protective Order shall become effective immediately upon  
10 its entry by the Court. The parties agree that, pending the entry of this **Protective**  
11 Order by the Court, any production of documents or information will be subject to  
12 the terms of this Protective Order.

13 C. Nothing in this Protective Order precludes the entry of  
14 additional protective orders in the Action, if such additional protective orders are  
15 appropriate.

16 **XII. MISCELLANEOUS**

17 Nothing herein limits the ability of a party or third party to use or to disclose  
18 its own Confidential Information.

19  
20 DATED: November 5, 2013



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MARGARET A. NAGLE

UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT "A"**  
**NON-DISCLOSURE AGREEMENT**

I certify that I have carefully read the Protective Order ("Order") in the case of *Insomniac, Inc., et al. v. D Donnie Productions, Inc., et al.*, Case No. CV 13-02284-ODW(MANx), and that I fully understand the terms of the Order. I recognize that I am bound by the terms of the Order, and I agree to comply with those terms. I hereby consent to the personal jurisdiction of the United States District Court for the Central District of California for any proceedings involving the enforcement of the Order.

Executed this day \_\_\_\_ of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Affiliation or Company

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Home Address