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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

J. GREGORY BROWN, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

NATIONAL LIFE INSURANCE
COMPANY,

Defendant.

Case No. CV13-2547 PA-CWx

PROTECTIVE ORDER

DISCOVERY MATTER

In light of the parties' Stipulated Protective Order, and good cause appearing, the Court hereby grants the parties' stipulation and hereby orders as follows:

1. **PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

1 The parties acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords from public
3 disclosure and use extends only to the limited information or items that are entitled
4 to confidential treatment under the applicable legal principles. The parties further
5 acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective
6 Order does not entitle them to file confidential information under seal; Civil Local
7 Rule 79-5 sets forth the procedures that must be followed and the standards that will
8 be applied when a party seeks permission from the court to file material under seal.

9
10 **2. DEFINITIONS**

11 2.1 Challenging Party: a Party or Non-Party that challenges the
12 designation of information or items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for
15 protection under standards developed under Federal Rule of Civil Procedure 26(c).

16 2.3 “LAWYERS ONLY” Information or Items: extremely sensitive
17 Confidential Information or Items (regardless of how it is generated, stored or
18 maintained) that contain personal information of a highly sensitive nature or whose
19 disclosure to another Party or Non-Party would create a substantial risk of injury
20 that could not be avoided by less restrictive means.

21 2.4 Counsel (without qualifier): Outside Counsel of Record and House
22 Counsel (as well as persons supporting them, including but not limited to attorneys,
23 paralegals, secretaries, law clerks and investigators).

24 2.5 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL” or “LAWYERS ONLY.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation, along with his or her employees and support personnel,
5 who has been retained by a Party or its Counsel to serve as an expert witness or as a
6 consultant in this action.

7 2.8 House Counsel: attorneys and other personnel employed by a Party to
8 this action to perform legal functions who are responsible for overseeing this
9 litigation for the Party., or attorneys who are employees of an insurer Party to any
10 insurance agreement under which an insurance business may be liable to satisfy all
11 or part of a possible judgment in this action or to indemnify or reimburse for
12 payments made to satisfy the judgment. House Counsel does not include Outside
13 Counsel of Record or any other outside counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys, along with persons supporting
17 them, including other attorneys, their paralegals and other support personnel, who
18 are not employees of a Party to this action but are retained to represent or advise a
19 Party to this action and have appeared in this action on behalf of that Party or are
20 affiliated with a law firm which has appeared on behalf of that Party.

21 2.11 Party: any party to this action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this action.

26 2.13 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL” or “LAWYERS ONLY.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7
8 **3. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only
10 Protected Material (as defined above), but also (1) any information copied or
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or
12 compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material.
14 However, the protections conferred by this Stipulation and Order do not cover the
15 following information: (a) any information that is in the public domain at the time of
16 disclosure to a Receiving Party or becomes part of the public domain after its
17 disclosure to a Receiving Party as a result of publication not involving a violation of
18 this Order, including becoming part of the public record through trial or otherwise;
19 and (b) any information known to the Receiving Party prior to the disclosure or
20 obtained by the Receiving Party after the disclosure from a source who obtained the
21 information lawfully and under no obligation of confidentiality to the Designating
22 Party. Any use of Protected Material at trial shall be governed by a separate
23 agreement or order.

24 **4. DURATION**

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

6
7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or Non-Party that designates information or items for protection under
10 this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate for
12 protection only those parts of material, documents, items, or oral or written
13 communications that qualify – so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.

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

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

24 5.2 Manner and Timing of Designations. Except as otherwise provided in
25 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
27 under this Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
5 “LAWYERS ONLY” to each page that contains protected material. If only a portion
6 or portions of the material on a page qualifies for protection, the Producing Party
7 also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins). A Party or Non-Party that makes original documents or
9 materials available for inspection need not designate them for protection until after
10 the inspecting Party has indicated which material it would like copied and produced.
11 During the inspection and before the designation, all of the material made available
12 for inspection shall be deemed “CONFIDENTIAL” or “LAWYERS ONLY”. After
13 the inspecting Party has identified the documents it wants copied and produced, the
14 Producing Party must determine which documents, or portions thereof, qualify for
15 protection under this Order. Then, before producing the specified documents, the
16 Producing Party must affix the “CONFIDENTIAL” or “LAWYERS ONLY” legend
17 to each page that contains Protected Material. If only a portion or portions of the
18 material on a page qualifies for protection, the Producing Party also must clearly
19 identify the protected portion(s) (e.g., by making appropriate markings in the
20 margins).

21 (b) for testimony given in deposition or in other pretrial or trial
22 proceedings, that the Designating Party identify on the record, before the close of
23 the deposition, hearing, or other proceeding, all protected testimony. When it is
24 impractical to identify separately each portion of testimony that is entitled to
25 protection, and when it appears that substantial portions of the testimony may
26 qualify for protection, the Party or Non-Party seeking to invoke this Order may,
27 within 30 days after receiving a copy of the deposition or hearing transcript, and any
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1 exhibits attached thereto, identify the specific portions of the testimony as to which
2 protection is sought and specify the level of protection being asserted.

3 (c) for information produced in some form other than documentary and
4 for any other tangible items, that the Producing Party affix in a prominent place on
5 the exterior of the container or containers in which the information or item is stored
6 the legend “CONFIDENTIAL” or “LAWYERS ONLY.” If only a portion or
7 portions of the information or item warrant protection, the Producing Party, to the
8 extent practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party’s right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time. Unless a prompt challenge to a
18 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
19 substantial unfairness, unnecessary economic burdens, or a significant disruption or
20 delay of the litigation, a Party does not waive its right to challenge a confidentiality
21 designation by electing not to mount a challenge promptly after the original
22 designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process by providing written notice of each designation it is challenging
25 and describing the basis for each challenge. To avoid ambiguity as to whether a
26 challenge has been made, the written notice must recite that the challenge to
27 confidentiality is being made in accordance with this specific paragraph of the
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1 Protective Order. The parties shall attempt to resolve each challenge in good faith
2 and must begin the process by conferring directly (in voice to voice dialogue; other
3 forms of communication are not sufficient) within 14 days of the date of service of
4 notice. In conferring, the Challenging Party must explain the basis for its belief that
5 the confidentiality designation was not proper and must give the Designating Party
6 an opportunity to review the designated material, to reconsider the circumstances,
7 and, if no change in designation is offered, to explain the basis for the chosen
8 designation. A Challenging Party may proceed to the next stage of the challenge
9 process only if it has engaged in this meet and confer process first or establishes that
10 the Designating Party is unwilling to participate in the meet and confer process in a
11 timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
13 court intervention, the Designating Party shall file and serve a motion and joint
14 stipulation to retain confidentiality under Civil Local Rule 37 (and in compliance
15 with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of
16 challenge or within 14 days of the parties agreeing that the meet and confer process
17 will not resolve their dispute, whichever is earlier. Each such motion must be
18 accompanied by a joint stipulation and competent declaration affirming that the
19 movant has complied with the meet and confer requirements imposed in the
20 preceding paragraph. Failure by the Designating Party to make such a motion
21 including the required joint stipulation and declaration within 21 days (or 14 days, if
22 applicable) shall automatically waive the confidentiality designation for each
23 challenged designation. In addition, the Challenging Party may file a motion
24 challenging a confidentiality designation at any time if there is good cause for doing
25 so, including a challenge to the designation of a deposition transcript or any portions
26 thereof.

27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges, and those made for an improper purpose

1 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
2 expose the Challenging Party to sanctions. Unless the Designating Party has waived
3 the confidentiality designation by failing to file a motion to retain confidentiality as
4 described above, all parties shall continue to afford the material in question the level
5 of protection to which it is entitled under the Producing Party's designation until the
6 court rules on the challenge. Nothing in this section should be construed to relieve
7 the parties of their obligations under Civil Local Rule 37 when filing discovery
8 motions.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 case only for prosecuting, defending, or attempting to settle this litigation. Such
13 Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in this Order. When the litigation has been terminated, a
15 Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION).

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

20 7.2 Disclosure of "CONFIDENTIAL" or "LAWYERS ONLY"
21 Information or Items. Unless otherwise ordered by the court or permitted in writing
22 by the Designating Party, a Receiving Party may disclose any information or item
23 designated "CONFIDENTIAL" or "LAWYERS ONLY" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this action, as well
25 as employees of said Outside Counsel of Record to whom it is reasonably necessary
26 to disclose the information for this litigation and who have signed the
27 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
28 A;

1 (b) current or former officers, directors, and employees (including House
2 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
3 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A), except such persons shall not have access to information designated
5 “LAWYERS ONLY”;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A), except such persons
9 shall not have access to information designated “LAWYERS ONLY”;

10 (d) the Court and its personnel;

11 (e) court reporters retained to transcribe testimony in this action and their
12 staff;

13 (f) professional jury or trial consultants, mock jurors, and Professional
14 Vendors to whom disclosure is reasonably necessary for this litigation and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), except
16 such persons shall not have access to information designated “LAWYERS ONLY”;

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to
19 Be Bound” (Exhibit A), except such persons shall not have access to information
20 designated “LAWYERS ONLY.” Pages of transcribed deposition testimony or
21 exhibits to depositions that reveal Protected Material must be separately bound by
22 the court reporter and may not be disclosed to anyone except as permitted under this
23 Stipulated Protective Order.

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

1 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “LAWYERS ONLY,” that Party must:

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

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

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

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” or “LAWYERS ONLY” before a determination by
17 the court from which the subpoena or order issued, unless the Party has obtained the
18 Designating Party’s permission. The Designating Party shall bear the burden and
19 expense of seeking protection in that court of its confidential material – and nothing
20 in these provisions should be construed as authorizing or encouraging a Receiving
21 Party in this action to disobey a lawful directive from another court.

22 9. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a
25 Non-Party in this action and designated as “CONFIDENTIAL” or “LAWYERS
26 ONLY.” Such information produced by Non-Parties in connection with this
27 litigation is protected by the remedies and relief provided by this Order. Nothing in
28 these provisions should be construed as prohibiting a Non-Party from seeking
29 additional protections.

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

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

8 (2) promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this litigation, the relevant discovery request(s), and a
10 reasonably specific description of the information requested; and

11 (3) make the information requested available for inspection by the
12 Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this
14 court within 14 days of receiving the notice and accompanying information, the
15 Receiving Party may produce the Non-Party's confidential information responsive
16 to the discovery request. If the Non-Party timely seeks a protective order, the
17 Receiving Party shall not produce any information in its possession or control that is
18 subject to the confidentiality agreement with the Non-Party before a determination
19 by the court. Absent a court order to the contrary, the Non-Party shall bear the
20 burden and expense of seeking protection in this court of its Protected Material.

21
22 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
26 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
27 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
28 persons to whom unauthorized disclosures were made of all the terms of this Order,

1 and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3
4 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). When a Receiving Party discovers privileged material that
9 may have been inadvertently produced, the Receiving Party must notify the
10 Producing Party with sufficient particularity to identify the potentially privileged
11 material. In the event the Producing Party confirms that such records are privileged
12 and were inadvertently produced, the obligations of the Receiving Parties are those
13 set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

14
15 **12. NON-WAIVER OF PRIVILEGED OR WORK-PRODUCT-
16 PROTECTED DOCUMENT**

17 Pursuant to Federal Rule of Evidence 502(d), the production of a privileged or
18 work-product-protected document, whether inadvertent or otherwise, is not a waiver
19 of privilege or protection from discovery in this case or in any other federal or state
20 proceeding. For example, the mere production of privileged or work-product-
21 protected documents in this case as part of a mass production is not itself a waiver in
22 this case or in any other federal or state proceeding.

23 **13. MISCELLANEOUS**

24 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the court in the future.

26 13.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
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1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 13.3 Filing “LAWYERS ONLY” Material. Without written permission from
5 the Designating Party or a court order secured after appropriate notice to all
6 interested persons, a Party may not file in the public record in this action any
7 information designated as “LAWYERS ONLY.” A Party that seeks to file under
8 seal any information designated as “LAWYERS ONLY” must comply with Civil
9 Local Rule 79-5. “LAWYERS ONLY” materials may only be filed under seal
10 pursuant to a court order authorizing the sealing of the specific materials at issue.

11 **14. FINAL DISPOSITION**

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

3 **IT IS SO ORDERED.**

Carla M. Woehrle

5 DATED: August 15, 2013

The Honorable Carla Woehrle
United States Magistrate Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *J. Gregory Brown et al. v. National Life Insurance*
8 *Company*, Case No. CV13-2547 PA-CWx. I agree to comply with and to be bound
9 by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.
14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27 Signature: _____

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