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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD KROENIG, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MAXIM HEALTHCARE SERVICES, INC., a Maryland Corporation, E-VERIFILE.COM, INC., a Georgia Corporation ,

Defendants.

Case No. CV 14-03471 FMO (ASx)

[DISCOVERY MATTER]

~~[PROPOSED]~~ STIPULATED PROTECTIVE ORDER

Complaint Filed: May 5, 2014
FAC Filed: July 9, 2014
SAC Filed: September 12, 2014

Based on the Joint Stipulation for Entry of Protective Order by Maxim Healthcare Services, Inc. and Plaintiff, and good cause appearing, the Court orders as follows:

1. A. 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. For example, Plaintiff will request that Defendant produce information that references job applicants by name and other identifying contact information (such as their names, addresses, telephone number,

1 social security numbers, etc.). The applicants may have privacy interests in such
2 information. In addition, Plaintiff will request that Defendant produce information
3 related to business practices or other information subject to confidentiality
4 agreements with non-parties, the terms and content of which are not subject to
5 disclosure and Defendant would not share with its competitors.

6 Accordingly, the parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this Order does
8 not confer blanket protections on all disclosures or responses to discovery and that
9 the protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
12 that this Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5.1 sets forth the procedures that must
14 be followed and the standards that will be applied when a party seeks permission
15 from the Court to file material under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve information that is the subject of a non-
18 disclosure or confidentiality agreement or obligation and/or proprietary information
19 for which special protection from public disclosure and from use for any purpose
20 other than prosecution of this action is warranted. Such confidential and proprietary
21 materials and information may consist of, among other things, the names or other
22 information tending to reveal the identity of private individuals, information related
23 to internal operations, confidential business or financial information, information
24 regarding business practices, information otherwise generally unavailable to the
25 public, or which may be privileged or otherwise protected from disclosure under
26 state or federal statutes, court rules, case decisions, or common law. Accordingly, to
27 expedite the flow of information, to facilitate the prompt resolution of disputes over
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1 confidentiality of discovery materials, to adequately protect information the parties
2 are entitled to keep confidential, to ensure that the parties are permitted reasonable
3 necessary uses of such material in preparation for and in the conduct of trial, to
4 address their handling at the end of the litigation, and serve the ends of justice, a
5 protective order for such information is justified in this matter. It is the intent of the
6 parties that information will not be designated as confidential for tactical reasons and
7 that nothing be so designated without a good faith belief that it has been maintained
8 in a confidential, non-public manner, and there is good cause why it should not be
9 part of the public record of this case.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation
12 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 Federal Rule of Civil Procedure 26(c) and as specified in the above
16 Good Cause Statement.

17 2.3 Counsel (without qualifier): Outside Counsel of Record and House
18 Counsel (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless
23 of the medium or manner in which it is generated, stored, or maintained (including,
24 among other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this matter.
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1 2.6 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a party
10 to this action but are retained to represent or advise a party to this action and have
11 appeared in this action on behalf of that party or are affiliated with a law firm which
12 has appeared on behalf of that party.

13 2.10 Party: any party to this action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.
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1 3. SCOPE

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

17 4. DURATION

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

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
27 page that contains protected material. If only a portion or portions of the material on
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1 a page qualifies for protection, the Producing Party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).

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

15 (b) for testimony given in deposition or in other pretrial or trial
16 proceedings, that the Designating Party identify on the record, before the close of the
17 deposition, hearing, or other proceeding, all protected testimony.

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

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
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1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time that is consistent with the Court's
6 Scheduling Order. Unless a prompt challenge to a Designating Party's
7 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
8 unnecessary economic burdens, or a significant disruption or delay of the litigation,
9 a Party does not waive its right to challenge a confidentiality designation by electing
10 not to mount a challenge promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The parties shall comply with the requirements of
12 Local Rule 37.1, *et seq.* in challenging confidentiality designations. The
13 Challenging Party shall initiate the dispute resolution process by providing written
14 notice of each designation it is challenging and describing the basis for each
15 challenge. In addition to the requirements in Local Rule 37.1, to avoid ambiguity as
16 to whether a challenge has been made, the written notice must recite that the
17 challenge to confidentiality is being made in accordance with this specific paragraph
18 of the Protective Order. The parties shall attempt to resolve each challenge in good
19 faith and must begin the process by conferring directly (in voice to voice dialogue;
20 other forms of communication are not sufficient) within 10 days of the date of
21 service of notice. In conferring, the Challenging Party must explain the basis for its
22 belief that the confidentiality designation was not proper and must give the
23 Designating Party an opportunity to review the designated material, to reconsider the
24 circumstances, and, if no change in designation is offered, to explain the basis for
25 the chosen designation. A Challenging Party may proceed to the next stage of the
26 challenge process only if it has engaged in this meet and confer process first or
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1 establishes that the Designating Party is unwilling to participate in the meet and
2 confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Designating Party shall file and serve a motion to retain
5 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
6 79-5.1, if applicable) within 21 days of the initial notice of challenge or within 14
7 days of the parties agreeing that the meet and confer process will not resolve their
8 dispute, whichever is earlier. Each such motion must be accompanied by a
9 competent declaration affirming that the movant has complied with the meet and
10 confer requirements imposed in the preceding paragraph. Failure by the Designating
11 Party to make such a motion including the required declaration within 21 days (or 14
12 days, if applicable) shall automatically waive the confidentiality designation for each
13 challenged designation. In addition, the Challenging Party may file a motion
14 challenging a confidentiality designation at any time if there is good cause for doing
15 so, including a challenge to the designation of a deposition transcript or any portions
16 thereof. Any motion brought pursuant to this provision must be accompanied by a
17 competent declaration affirming that the movant has complied with the meet and
18 confer requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges, and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
22 expose the Challenging Party to sanctions. Unless the Designating Party has waived
23 the confidentiality designation by failing to file a motion to retain confidentiality as
24 described above, all parties shall continue to afford the material in question the level
25 of protection to which it is entitled under the Producing Party's designation until the
26 Court rules on the challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the litigation has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the Court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
17 as employees of said Outside Counsel of Record to whom it is reasonably necessary
18 to disclose the information for this litigation and who have signed the
19 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
20 A;

21 (b) the officers, directors, and employees (including House Counsel) of
22 the Receiving Party to whom disclosure is reasonably necessary for this litigation
23 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
24 A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this litigation and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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(d) the Court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

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

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

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

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

1 If the Designating Party timely seeks a protective order, the Party served with
2 the subpoena or Court order shall not produce any information designated in this
3 action as “CONFIDENTIAL” before a determination by the Court from which the
4 subpoena or order issued, unless the Party has obtained the Designating Party’s
5 permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material – and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this action to
8 disobey a lawful directive from another court.

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

11 (a) The terms of this Order are applicable to information produced by a
12 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
13 produced by Non-Parties in connection with this litigation is protected by the
14 remedies and relief provided by this Order. Nothing in these provisions should be
15 construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

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

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

26 (3) make the information requested available for inspection by the
27 Non-Party.
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1 (c) If the Non-Party fails to object or seek a protective order from this
2 Court within 14 days of receiving the notice and accompanying information, the
3 Receiving Party may produce the Non-Party’s confidential information responsive to
4 the discovery request. If the Non-Party timely seeks a protective order, the
5 Receiving Party shall not produce any information in its possession or control that is
6 subject to the confidentiality agreement with the Non-Party before a determination
7 by the Court. Absent a Court order to the contrary, the Non-Party shall bear the
8 burden and expense of seeking protection in this Court of its Protected Material.

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
20 PROTECTED MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection,
23 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
24 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
25 may be established in an e-discovery order that provides for production without prior
26 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
27 parties reach an agreement on the effect of disclosure of a communication or
28 information covered by the attorney-client privilege or work product protection, the

1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the Court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the
12 Designating Party or a Court order secured after appropriate notice to all interested
13 persons, a Party may not file in the public record in this action any Protected
14 Material. A Party that seeks to file under seal any Protected Material must comply
15 with Civil Local Rule 79-5.1. Protected Material may only be filed under seal
16 pursuant to a Court order authorizing the sealing of the specific Protected Material at
17 issue. Pursuant to Civil Local Rule 79-5.1, a sealing order will issue only upon a
18 request establishing that the Protected Material at issue is privileged, protectable as a
19 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's
20 request to file Protected Material under seal pursuant to Civil Local Rule 79-5.1 is
21 denied by the Court, then the Receiving Party may file the information in the public
22 record unless (1) the designator seeks reconsideration within four days of the denial,
23 or (2) as otherwise instructed by the Court.

24 13. FINAL DISPOSITION

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

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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18 DATED: December 2, 2014

/ s /
HON. ALKA SAGAR
United States Magistrate Judge

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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 *Ronald Kroenig v. Maxim Healthcare Services,
Inc. et al*, Case No. CV 14-3471 FMO (ASx). 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: _____

Printed name: _____

Signature: _____