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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN KRISTENSEN, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

CREDIT ONE BANK, N.A., and,
FIRST CONTACT, LLC,

Defendants.

Case no. 2:14-cv-07963-DMG-AJW

PROTECTIVE ORDER

Defendant CREDIT ONE BANK, N.A. ("Defendant") and Plaintiff JOHN KRISTENSEN ("Plaintiff"), through their respective counsel, hereby file this Stipulated Protective Order as set forth below.

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

1 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
2 following Stipulated Protective Order. The parties acknowledge that this Order does not
3 confer blanket protections on all disclosures or responses to discovery and that the
4 protection it affords from public disclosure and use extends only to the limited
5 information or items that are entitled to confidential treatment under the applicable legal
6 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
7 Stipulated Protective Order does not entitle them to file confidential information under
8 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
9 standards that will be applied when a party seeks permission from the court to file
10 material under seal.
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14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.
17

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
19 it is generated, stored or maintained) or tangible things that qualify for protection under
20 Federal Rule of Civil Procedure 26(c).
21

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House
23 Counsel (as well as their support staff).
24

25 2.4 Designating Party: a Party or Non-Party that designates information or
26 items that it produces in disclosures or in responses to discovery as
27 “CONFIDENTIAL.”
28

1 2.5 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including, among
3 other things, testimony, transcripts, and tangible things), that are produced or generated
4 in disclosures or responses to discovery in this matter.
5

6 2.6 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
8 expert witness or as a consultant in this action.
9

10 2.7 House Counsel: attorneys who are employees of a party to this action.
11 House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.
13

14 2.8 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.
16

17 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
18 this action but are retained to represent or advise a party to this action and have
19 appeared in this action on behalf of that party or are affiliated with a law firm which has
20 appeared on behalf of that party.
21

22 2.10 Party: any party to this action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their
24 support staffs).
25

26 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this action.
28

1 2.12 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
4 their employees and subcontractors.
5

6 2.13 Protected Material: any Disclosure or Discovery Material that is designated
7 as “CONFIDENTIAL.”
8

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
10 from a Producing Party.
11

12 3. SCOPE

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

3 4. DURATION

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

12 13 14 5. DESIGNATING PROTECTED MATERIAL

15 16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
17 Party or Non-Party that designates information or items for protection under this Order
18 must take care to limit any such designation to specific material that qualifies under the
19 appropriate standards. The Designating Party must designate for protection only those
20 parts of material, documents, items, or oral or written communications that qualify – so
21 that other portions of the material, documents, items, or communications for which
22 protection is not warranted are not swept unjustifiably within the ambit of this Order.
23

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

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the mistaken designation.
6

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
9 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
10 must be clearly so designated before the material is disclosed or produced.
11

12 Designation in conformity with this Order requires:

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

8
9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
10 the Designating Party identify on the record, before the close of the deposition, hearing,
11 or other proceeding, all protected testimony.
12

13 (c) for information produced in some form other than documentary and for any
14 other tangible items, that the Producing Party affix in a prominent place on the exterior
15 of the container or containers in which the information or item is stored the legend
16 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
17 protection, the Producing Party, to the extent practicable, shall identify the protected
18 portion(s).
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21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
22 failure to designate qualified information or items does not, standing alone, waive the
23 Designating Party’s right to secure protection under this Order for such material. Upon
24 timely correction of a designation, the Receiving Party must make reasonable efforts to
25 assure that the material is treated in accordance with the provisions of this Order.
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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a Designating
4 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
5 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
6 litigation, a Party does not waive its right to challenge a confidentiality designation by
7 electing not to mount a challenge promptly after the original designation is disclosed.
8

9
10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
11 resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly
12 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.6.3.6.3

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

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this case
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1 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
2 Material may be disclosed only to the categories of persons and under the conditions
3 described in this Order. When the litigation has been terminated, a Receiving Party
4 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
12 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

28 (d) the court and its personnel;

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

6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
8 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
9 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
10 Protected Material must be separately bound by the court reporter and may not be
11 disclosed to anyone except as permitted under this Stipulated Protective Order.
12

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.
16

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
18 IN OTHER LITIGATION

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20 If a Party is served with a subpoena or a court order issued in other litigation that
21 compels disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” that Party must:
23

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

26 (b) promptly notify in writing the party who caused the subpoena or order to
27 issue in the other litigation that some or all of the material covered by the subpoena or
28

1 order is subject to this Protective Order. Such notification shall include a copy of this
2 Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.
5

6 If the Designating Party timely seeks a protective order, the Party served with the
7 subpoena or court order shall not produce any information designated in this action as
8 “CONFIDENTIAL” before a determination by the court from which the subpoena or
9 order issued, unless the Party has obtained the Designating Party’s permission. The
10 Designating Party shall bear the burden and expense of seeking protection in that court
11 of its confidential material – and nothing in these provisions should be construed as
12 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
13 from another court.
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17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

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

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

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

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

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

13 (c) If the Non-Party fails to object or seek a protective order from this court
14 within 14 days of receiving the notice and accompanying information, the Receiving
15 Party may produce the Non-Party's confidential information responsive to the
16 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party
17 shall not produce any information in its possession or control that is subject to the
18 confidentiality agreement with the Non-Party before a determination by the court.
19
20 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
21 seeking protection in this court of its Protected Material.
22

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24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL
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10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other protection, the
12 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
13 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
14 may be established in an e-discovery order that provides for production without prior
15 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
16 parties reach an agreement on the effect of disclosure of a communication or
17 information covered by the attorney-client privilege or work product protection, the
18 parties may incorporate their agreement in the stipulated protective order submitted to
19 the court.
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24 If a Designating Party inadvertently discloses information in connection with the
25 pending litigation to another Party that the Designating Party thereafter claims to be
26 privileged or protected by the attorney-client privilege or attorney work product
27 protection (“Disclosed Protected Information”), the disclosure of the Disclosed
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1 Protected Information shall not constitute or be deemed a waiver or forfeiture of any
2 claim of privilege or work product protection that the Designating Party would
3 otherwise be entitled to assert with respect to the Disclosed Protected Information and
4 its subject matter in this proceeding or in any other federal or state proceeding.
5

6 A Designating Party may assert in writing attorney-client privilege or work
7 product protection with respect to Disclosed Protected Information. The Receiving
8 Party must—unless it contests the claim of attorney-client privilege or work product
9 protection in accordance with sub-paragraph (c)—within five business days of receipt
10 of that writing, (i) return or destroy all copies of the Disclosed Protected Information,
11 and (ii) provide a certification of counsel that all of the Disclosed Protected Information
12 has been returned or destroyed. Within five business days after assertion of attorney-
13 client privilege or work product protection with respect to Disclosed Protected
14 Information, the Designating Party must produce a privilege log with respect to the
15 Disclosed Protected Information.
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20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
22 person to seek its modification by the court in the future.
23

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
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1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the Designating
4 Party or a court order secured after appropriate notice to all interested persons, a Party
5 may not file in the public record in this action any Protected Material. A Party that
6 seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.
7 Protected Material may only be filed under seal pursuant to a court order authorizing
8 the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-
9 5, a sealing order will issue only upon a request establishing that the Protected Material
10 at issue is privileged, protectable as a trade secret, or otherwise entitled to protection
11 under the law. If a Receiving Party's request to file Protected Material under seal
12 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party
13 may file the information in the public record pursuant to Civil Local Rule 79-5(e)
14 unless otherwise instructed by the court.
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19 13. FINAL DISPOSITION

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

16 DATED: February 1, 2016

MARTIN & BONTRAGER, APC¹

17
18 By: s/ Nicolas Bontrager
19 Nicolas Bontrager
20 Attorneys for Plaintiff
21 JOHN KRISTENSEN
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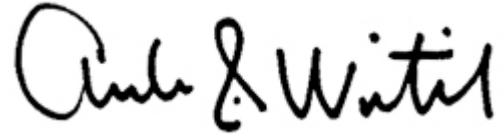
28 ¹ Pursuant to Local Rule 5-4.3.4 Defendant obtained authorization from the other signatories to file this document

1 DATED: February 1, 2016

CARLSON & MESSER LLP

2 By: s/David J. Kaminski
3 David J. Kaminski
4 Stephen A. Watkins
Attorneys for Defendant
CREDIT ONE BANK, N.A.

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6
7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8 

9 DATED: 2/22/2016

10 ANDREW J. WISTRICH
11 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 *Kristensen v. Credit One Bank, N.A. et al.*, Case No. 2:14-cv-07963-DMG-AJW. 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 Northern 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: _____

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Signature: _____