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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MOROCCANOIL, INC., a California corporation,
Plaintiff,
v.
GROUPON, INC., a Delaware corporation; and DOES 1 through 20, inclusive,
Defendant.

CASE No. CV15-08078 AB (MRWx)
~~PROPOSED~~ ORDER ON STIPULATED PROTECTIVE ORDER
Hon. Andre Birotte Jr.,
Presiding Judge
Hon. Michael R. Wilner,
Magistrate Judge
Complaint filed: October 14, 2015
Trial Date: None

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve the production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it
8 affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles. The
10 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.
14

15 B. GOOD CAUSE STATEMENT

16 This action involves claims for trademark infringement and unfair competition.
17 The parties are variously manufacturers, distributors, and sellers of goods. Some of the
18 parties are likely to be direct or indirect competitors of one another. In order to
19 establish their claims and defenses, the parties intend to seek discovery regarding
20 information which the parties deem confidential, including but not limited to non-
21 public information regarding sales, supplier identities and preferences, customer
22 identities and preferences, import and export practice, financial information, internal
23 policies and procedures with respect to the purchase and handling of goods, business
24 strategies, and potentially other commercially and competitively sensitive information.

25 It is anticipated that there will be depositions of the parties' employees or agents,
26 as well as that of third party suppliers, distributors, and manufacturers, and such
27 persons will likely be asked to answer questions on these potentially sensitive subject
28 areas. Because this matter will necessarily involve requests for disclosure of

1 confidential information, a protective order is therefore necessary to avoid any
2 prejudice or harm which would likely result if such information was disclosed in the
3 absence of the protections set forth herein. Accordingly, to expedite the flow of
4 information, to facilitate the prompt resolution of disputes over confidentiality of
5 discovery materials, to adequately protect information the parties are entitled to keep
6 confidential, to ensure that the parties are permitted reasonable necessary uses of such
7 material in preparation for and in the conduct of trial, to address their handling at the
8 end of the litigation, and serve the ends of justice, a protective order for such
9 information is justified in this matter. It is the intent of the parties that information will
10 not be designated as confidential for tactical reasons and that nothing be so designated
11 without a good faith belief that it has been maintained in a confidential, non-public
12 manner, and there is good cause why it should not be part of the public record of this
13 case.

14

15 2. DEFINITIONS

16 2.1 Action: this pending federal lawsuit, *Moroccanoil, Inc. v. Groupon, Inc., et*
17 *al.*, Case No. 15-cv-08078-AB(MRWx).

18 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
19 information or items under this Order.

20 2.3 Confidential Information or Items: information (regardless of how it is
21 generated, stored or maintained) or tangible things that qualify for protection under
22 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
23 Statement. A Designating Party may designate Confidential Information or Items
24 either CONFIDENTIAL or ATTORNEYS' EYES ONLY, as follows:

25 (a) CONFIDENTIAL designation. A Designating Party may designate
26 material CONFIDENTIAL only if it deems that a reasonable basis exists for limiting
27 dissemination of the material under the standards of Rule 26 and that the material
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1 contains confidential and/or proprietary commercial information that is not generally
2 available to the public

3 (b) ATTORNEYS' EYES ONLY designation. A Designating Party may
4 only designate material ATTORNEYS' EYES ONLY if it deems that disclosure of
5 such material to another person or party would be injurious to the commercial interests
6 of the designating entity under the standards of Rule 26 and that the material contains
7 highly propriety technical or trade secret or business information so that the risk of
8 improper use or disclosure to another party outweighs the right of that party to review
9 such information.

10 2.4 Counsel: Outside Counsel and House Counsel.

11 2.5 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

14 2.6 Disclosure or Discovery Material: all items or information, regardless of
15 the medium or manner in which it is generated, stored, or maintained (including, among
16 other things, testimony, transcripts, and tangible things), that are produced or generated
17 in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
20 expert witness or as a consultant in this Action.

21 2.8 House Counsel: one attorney who is an employee of a party to this Action,
22 and one support staff employee. House Counsel does not include Outside Counsel or
23 any other outside counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel: attorneys (and their support staff) who are not employees
27 of a party to this Action but are retained to represent or advise a party to this Action.

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1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel (and their support
3 staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
9 their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL or “ATTORNEYS’ EYES ONLY.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected
16 Material (as defined above), but also (1) any information copied or extracted from
17 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
18 Material; and (3) any testimony, conversations, or presentations by Parties or their
19 Counsel that might reveal Protected Material.

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

22
23 4. DURATION

24 4.1 If the Action proceeds to trial: all of the information that was designated as
25 confidential or maintained pursuant to this protective order will no longer carry such
26 designation, unless compelling reasons supported by specific factual findings to
27 proceed otherwise are made to the trial judge in advance of the trial. See Kamakana v.
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1 City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
2 “good cause” showing for sealing documents produced in discovery from “compelling
3 reasons” standard when merits-related documents are part of court record).
4 Accordingly, the terms of this protective order do not extend beyond the
5 commencement of the trial.

6 4.2 If the Action does not proceed to trial: even after final disposition of this
7 litigation, the confidentiality obligations imposed by this Order shall remain in effect
8 until a Designating Party agrees otherwise in writing or a court order otherwise directs.
9 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
10 defenses in this Action, with or without prejudice; and (2) final judgment herein after
11 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
12 this Action, including the time limits for filing any motions or applications for
13 extension of time pursuant to applicable law.

14
15 5. DESIGNATING PROTECTED MATERIAL

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a) and (b) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix at a minimum, the legend
8 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY”, to each page that contains
9 protected material. If only a portion or portions of the material on a page qualifies for
10 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
11 by making appropriate markings in the margins).

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

24 (b) In the case of depositions and deposition transcripts, the Designating
25 Party shall advise opposing counsel and the court reporter of the specific pages and
26 exhibits to be maintained as Confidential Information at the deposition or within thirty
27 (30) days after receipt of the transcript. For convenience, if a deposition transcript
28 contains repeated references to Confidential Information which cannot conveniently be

1 segregated from non-confidential information, the Designating Party may request that
2 the entire transcript be marked by the reporter as “CONFIDENTIAL” or
3 “ATTORNEYS’ EYES ONLY”. Until the expiration of the 30 day period, the entire
4 transcript shall be deemed Confidential Information absent an agreement by the parties
5 on the record.

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

12 5.3 Inadvertent Failures to Designate. Inadvertent failure to designate qualified
13 information or items does not, standing alone, waive the Designating Party’s right to
14 secure protection under this Order for such material, provided that the Designating
15 Party promptly correct the designation after discovery of such inadvertent failure. Upon
16 timely correction of a designation, the Receiving Party must make reasonable efforts to
17 assure that the material is treated in accordance with the provisions of this Order.

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19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court’s Scheduling
22 Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process under Local Rule 37.1 et seq.

25 6.3 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
27 to harass or impose unnecessary expenses and burdens on other parties) may expose the
28 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn

1 the confidentiality designation, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party’s
3 designation until the Court rules on the challenge.

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5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this
8 Action only for prosecuting, defending, or attempting to settle this Action. Such
9 Protected Material may be disclosed only to the categories of persons and under the
10 conditions described in this Order. When the Action has been terminated, a Receiving
11 Party must comply with the provisions of section 14 below (FINAL DISPOSITION).

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

15 7.2 Disclosure of Information designated “ATTORNEYS’ EYES ONLY”.
16 Unless otherwise ordered by the court or permitted in writing by the Designating Party,
17 a Receiving Party may disclose any information or item designated “ATTORNEYS’
18 EYES ONLY” only to:

19 (a) the Receiving Party’s Outside Counsel in this Action, as well as
20 employees of said Outside Counsel to whom it is reasonably necessary to disclose the
21 information for this Action;

22 (b) House Counsel to whom it is reasonably necessary to disclose the
23 information for this Action and who have signed the “Acknowledgement and
24 Agreement to Be Bound” (Exhibit A);

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

28 (d) the court and its personnel;

- 1 (e) court reporters and their staff;
- 2 (f) professional jury or trial consultants, mock jurors, and Professional
- 3 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 5 (g) the author or recipient of a document containing the information or a
- 6 custodian or other person who otherwise possessed or knew the information;
- 7 (h) during their depositions, witnesses, and attorneys for witnesses, in
- 8 the Action to whom disclosure is reasonably necessary provided: (1) the deposing party
- 9 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
- 10 not be permitted to keep any Confidential Information or Items unless they sign the
- 11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
- 12 by the Designating Party or ordered by the court. Pages of transcribed deposition
- 13 testimony or exhibits to depositions that reveal Protected Material may be separately
- 14 bound by the court reporter and may not be disclosed to anyone except as permitted
- 15 under this Stipulated Protective Order; and
- 16 (i) any mediator or settlement officer, and their supporting personnel,
- 17 mutually agreed upon by any of the parties engaged in settlement discussions.

18

19 7.3 Disclosure of Information designated “CONFIDENTIAL”. Unless

20 otherwise ordered by the court or permitted in writing by the Designating Party, a

21 Receiving Party may disclose any information or item designated “CONFIDENTIAL”

22 only to

- 23 (a) all persons listed in Section 7.2(a) – (i), above; and
- 24 (b) the officers, directors, and employees of the Receiving Party to
- 25 whom disclosure is reasonably necessary for this Action.

26

27 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN

28 OTHER LITIGATION

1 If a Party is served with a subpoena or a court order issued in other litigation that
2 compels disclosure of any information or items designated in this Action as
3 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

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

20
21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
22 IN THIS LITIGATION

23 9.1 The terms of this Order are applicable to information produced by a Non-
24 Party in this Action and designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES
25 ONLY.” Such information produced by Non-Parties in connection with this litigation is
26 protected by the remedies and relief provided by this Order. Nothing in these provisions
27 should be construed as prohibiting a Non-Party from seeking additional protections.
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1 9.2 In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's Confidential Information or Items in its possession, and the
3 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
4 Confidential Information or Items, then the Party shall:

5 (a) 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 agreement
7 with a Non-Party;

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

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

13 (d) If the Non-Party fails to 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 or Items 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 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
20 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 writing
26 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
27 all unauthorized copies of the Protected Material, (c) inform the person or persons to
28 whom unauthorized disclosures were made of all the terms of this Order, and (d)

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

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4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
5 PROTECTED MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain
7 inadvertently produced material is subject to a claim of privilege or other protection, the
8 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
10 may be established in an e-discovery order that provides for production without prior
11 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
12 parties reach an agreement on the effect of disclosure of a communication or
13 information covered by the attorney-client privilege or work product protection, the
14 parties may incorporate their agreement in the stipulated protective order submitted to
15 the court.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
18 person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in this
22 Stipulated Protective Order. Similarly, no Party waives any right to object on any
23 ground to use in evidence of any of the material covered by this Protective Order.

24 12.3 Filing Protected Material. Any Party who seeks to file with the Court
25 Protected Materials must file such materials under seal pursuant to Local Rule 79-5. If a
26 Party’s request to file Protected Material under seal is denied by the court, the
27 Receiving Party may file the information in the public record unless (a) otherwise
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1 instructed by the court or (b) the Designating Party gives notice within 24 hours that it
2 intends to seek reconsideration or other relief from the Court.

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4 13. APPLICABILITY TO LATER ADDED PARTIES

5 In the event additional parties join or are joined in this Action, they shall have 14
6 days to file objections as to why his or her individual case shall not be governed by this
7 Order. After the expiration of the 14 days or, if an objection is filed, after the Court
8 overrules such an objection, the new party shall have access to Protected Material and
9 shall be fully bound by this Protective Order.

10
11 14. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within 60
13 days of a written request by the Designating Party, each Receiving Party must return all
14 Protected Material to the Producing Party or destroy such material and provide
15 confirmation of the same. As used in this subdivision, “all Protected Material” includes
16 all copies, abstracts, compilations, summaries, and any other format reproducing or
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
18 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
19 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
20 expert reports, attorney work product, and consultant and expert work product, even if
21 such materials contain Protected Material. Any such archival copies that contain or
22 constitute Protected Material remain subject to this Protective Order as set forth in
23 Section 4 (DURATION).

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25 15. VIOLATIONS

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

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1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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5 Dated: February 19, 2016

/s/ Michael R. Wilner

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Honorable Michael R. Wilner
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 **[insert formal name of the case and the number and initials assigned to it by the court]**. 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.

Dated: _____

BY: _____

Signature

Printed Name

City and State where sworn and signed