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SERINE-CANNONAU VINEYARD, INC.

10 **IN THE UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

13 Viña UNDURRAGA S.A., a Chilean corporation,
14 Vitacura 2939, Piso 21, Las Condes Santiago, Chile,
Plaintiff,

15 v.

16 SERINE-CANNONAU VINEYARD, INC., dba
17 Terry Hoage Vineyards, a California corporation,
870 Arbor Road Paso Robles, California 93446,
18 Defendant.

Defendants.

Case No. 2:15-cv-09658-PSG-JPR

STIPULATED PROTECTIVE ORDER

NOTE CHANGES MADE BY THE COURT

22 **1. PURPOSES AND LIMITATIONS**

23 The disclosure and discovery activity in this action are likely to involve production of
24 confidential, proprietary, or private information for which special protection from public disclosure
25 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
26 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
27 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
28 or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment under the
2 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
3 this Stipulated Protective Order does not entitle them to file confidential information under seal;
4 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
5 applied when a party seeks permission from the court to file material under seal.

6 **2. DEFINITIONS**

7 2.1. Challenging Party: a Party or Non-Party that challenges the designation of information or
8 items under this Order.

9 2.2. “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
10 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
11 Procedure 26(c).

12 2.3. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.4. Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

17 2.5. Disclosure or Discovery Material: all items or information, regardless of the medium or
18 manner in which it is generated, stored, or maintained (including, among other things, testimony,
19 transcripts, and tangible things), that are produced or generated in disclosures or responses to
20 discovery in this matter.

21 2.6. Expert: a person with specialized knowledge or experience in a matter pertinent to the
22 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
23 consultant in this action.

24 2.7. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
25 extremely sensitive information (regardless of how it is generated, stored or maintained) or tangible
26 things that qualify for protection under Federal Rule of Civil Procedure 26(c) and whose disclosure
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1 to another Party or Non-Party would create a substantial risk of serious injury that could not be
2 avoided by less restrictive means.

3 2.8. House Counsel: attorneys who are employees of a party to this action. House Counsel
4 does not include Outside Counsel of Record or any other outside counsel.

5 2.9. Non-Party: any natural person, partnership, corporation, association, or other legal entity
6 not named as a Party to this action.

7 2.10. Outside Counsel of Record: attorneys who are not employees of a party to this action but
8 are retained to represent or advise a party to this action and have appeared in this action on behalf of
9 that party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.11. Party: any party to this action, including all of its officers, directors, employees,
11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.12. Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
13 this action.

14 2.13. Professional Vendors: persons or entities that provide litigation support services (e.g.,
15 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
16 storing, or retrieving data in any form or medium) and their employees and subcontractors.

17 2.14. Protected Material: any Disclosure or Discovery Material that is designated as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
20 Party.

21 **3. SCOPE**

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

26 However, the protections conferred by this Stipulation and Order do not cover the following
27 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
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1 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
2 publication not involving a violation of this Order, including becoming part of the public record
3 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
4 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
5 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
6 Protected Material at trial shall be governed by a separate agreement or order.

7 **4. DURATION**

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

14 **5. DESIGNATING PROTECTED MATERIAL**

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

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

26 If it comes to a Designating Party's attention that information or items that it designated
27 for protection do not qualify for protection at all or do not qualify for the level of protection initially
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1 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
2 mistaken designation.

3 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
4 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
5 Discovery Material that qualifies for protection under this Order must be clearly so designated
6 before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in deposition or in discovery-related proceedings, that the
2 Designating Party identify on the record, before the close of the deposition, hearing, or other
3 proceeding, all protected testimony.

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

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

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

22 6.3. 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution
23 process by providing written notice of each designation it is challenging and describing the basis for
24 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
25 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
26 of the Protective Order. The parties shall attempt to resolve each challenge in good faith pursuant to
27 Local Rule 37-1. In conferring, the Challenging Party must explain the basis for its belief that the
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1 confidentiality designation was not proper and must give the Designating Party an opportunity to
2 review the designated material, to reconsider the circumstances, and, if no change in designation is
3 offered, to explain the basis for the chosen designation. Judicial Intervention. If the Parties cannot
4 resolve a challenge without court intervention pursuant to strict compliance under Local Rule 37-1,
5 the Designating Party shall file and serve a Joint Stipulation, Supplemental Memorandum and Motion
6 to retain confidentiality in strict compliance with Local Rules 37-2 through 37-4. Failure by the
7 Designating Party to make such a motion with appropriate submissions under Local Rule 37 within
8 30 days from the date of the written notice described in paragraph 6.2 above shall automatically
9 waive the confidentiality designation for each challenged designation. In addition, the Challenging
10 Party may file a motion challenging a confidentiality designation, if there is good cause for doing so,
11 including a challenge to the designation of a deposition transcript or any portions thereof. Any
12 motion brought pursuant to this provision must strictly comply with Local Rules 37-1 through 37-4.

13 The burden of persuasion in any such motion under this provision shall be on the
14 Designating Party. Frivolous motions under this provision, and those made for an improper purpose
15 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the
16 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
17 designation by failing to file a motion to retain confidentiality as described above, all parties shall
18 continue to afford the material in question the level of protection to which it is entitled under the
19 Producing Party's designation until the court rules on the challenge.

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

21 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
22 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
24 the categories of persons and under the conditions described in this Order. When the litigation has
25 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
26 DISPOSITION).

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

3 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
4 court or permitted in writing by the Designating Party, a Receiving Party may disclose any
5 information or item designated “CONFIDENTIAL” only to:

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

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

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

16 (d) the court and its personnel;

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

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

26 (g) the author or recipient of a document containing the information or a custodian or
27 other person who otherwise possessed or knew the information.
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1 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
2 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” only to:

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

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

12 (c) the court and its personnel;

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

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

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

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

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

25 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
26 other litigation that some or all of the material covered by the subpoena or order is subject to this
27 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
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1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
2 Designating Party whose Protected Material may be affected.

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

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

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

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

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

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

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

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

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
16 **MATERIAL**

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

26 **12. MISCELLANEOUS**

1 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
2 modification by the court in the future.

3 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
4 Party waives any right it otherwise would have to object to disclosing or producing any information
5 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives
6 any right to object on any ground to use in evidence of any of the material covered by this Protective
7 Order.

8 12.3. Filing Protected Material. Without written permission from the Designating Party or a
9 court order secured after appropriate notice to all interested persons, a Party may not file in the
10 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
11 Material must comply with Civil Local Rule 79-5.

12 **13. FINAL DISPOSITION**

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

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5 Dated: December 22, 2016

Respectfully submitted,

6
7 ALVARADO SMITH , A/C
8 and
9 WESTERMAN, HATTORI, DANIELS
& ADRIAN, LLP

10 By: /Alan S. Cooper/
11 Alan S. Cooper
12 Attorneys for Plaintiff Counter
13 Defendant

14 By: /W. Michael Hensley
15 W. Michael Hensley
16 Attorneys for Plaintiff Counter
17 Defendant
18 VIÑA UNDURRAGA S.A.

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Dated: December 20, 2016

DONAHUE FITZGERALD LLP



By _____
Anne Haring Hocking
Attorneys for Defendant
SERINE-CANNAU VINEYARD,
INC.

1 **ATTESTATION:** Pursuant to Civil L.R. 5-1(i)(3), the filer attests that concurrence in the filing of
2 this document has been obtained from each of the other signatories thereto.
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4 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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6 DATED: December 28, 2016

JEAN ROSENBLUTH

Hon. Jean P. Rosenbluth
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 _____ [print
4 or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Central
6 District of California on _____ [date] in the case of _____ [insert formal
7 name of the case and the number and initials assigned to it by the court]. I agree to comply with and
8 to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
9 that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is subject to this
11 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
12 this Order.

13
14 I further agree to submit to the jurisdiction of the United States District Court for the Central District
15 of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
16 enforcement proceedings occur after termination of this action.

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

21
22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 Signature: _____

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