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 17 LTD. and BIXOLON AMERICA, INC.

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA

20 SHINHEUNG PRECISION CO., LTD.,
 21
 22 Plaintiff,
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 24 vs.
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 26 BIXOLON CO., LTD., a Korean
 27 corporation, and BIXOLON
 28 AMERICA, INC., a California
 corporation,
 Defendants.

CASE NO. 2:16-cv-00109-CAS (SSx)

The Hon. Christina A. Snyder
 Dept. 5

**[DEFENDANTS' PROPOSED]
 PROTECTIVE ORDER**

[Discovery Document: Referred to
 Magistrate Judge Suzanne H. Segal]

1 **[Defendants' Proposed] Protective Order**

2 **A. PURPOSES AND LIMITATIONS**

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

15 **B. GOOD CAUSE STATEMENT**

16 This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and
19 from use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, product design and development documents, confidential business or
22 financial information, information regarding confidential business practices, or other
23 confidential research, development, or commercial information (including
24 information implicating privacy rights of third parties), information otherwise
25 generally unavailable to the public, or which may be privileged or otherwise
26 protected from disclosure under state or federal statutes, court rules, case decisions,
27 or common law. Accordingly, to expedite the flow of information, to facilitate the
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1 prompt resolution of disputes over confidentiality of discovery materials, to
2 adequately protect information the parties are entitled to keep confidential, to ensure
3 that the parties are permitted reasonable necessary uses of such material in
4 preparation for and in the conduct of trial, to address their handling at the end of the
5 litigation, and serve the ends of justice, a protective order for such information is
6 justified in this matter. Information shall not be designated as confidential for
7 tactical reasons and without a good faith belief that it has been maintained in a
8 confidential, non-public manner, and there is good cause why it should not be part
9 of the public record of this case.

10 C. PROTECTIVE ORDER

11 1. This Order shall apply to all information produced during discovery in
12 this action that shall be designated by the party or person producing it as
13 “Confidential” or “Confidential - Attorneys’ Eyes Only” (collectively “Protected
14 Information”). This Order shall not apply to information that, before disclosure,
15 is properly in the possession or knowledge of the party to whom such disclosure
16 is made, or is public knowledge. The restrictions contained in this Order shall not
17 apply to information that is, or after disclosure becomes, public knowledge other
18 than by an act or omission of the party to whom such disclosure is made, or that is
19 legitimately acquired from a source not subject to this Order.

20 2. If an exhibit, pleading, interrogatory answer, or admission (collectively
21 “discovery response”), document or thing (collectively “document or thing”), or a
22 deposition transcript, other transcript of testimony, or declaration or affidavit
23 (collectively “testimony”) contains information considered confidential by a party,
24 such exhibit, pleading, discovery response, document or thing, or testimony shall be
25 designated “Confidential” or “Confidential - Attorneys’ Eyes Only” by the party
26 contending there is Protected Information therein.

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1 3. If an exhibit, pleading, discovery response, document or thing,
2 testimony or other court submission is designated “Confidential” or “Confidential -
3 Attorneys’ Eyes Only,” the legend “Confidential” or “Confidential - Attorneys’
4 Eyes Only” (in such a manner as will not interfere with the legibility thereof), or
5 a substantially similar variation thereof, shall be affixed before the production or
6 service upon a party.

7 4. As a general guideline, a document should be designated
8 “Confidential” when it contains confidential business, technical or other
9 information that may be reviewed by the Receiving Party, the parties’ experts, and
10 other representatives, but must be protected against disclosure to third parties. A
11 document may be designated “Confidential - Attorneys’ Eyes Only” only when it
12 contains the following highly sensitive information: financial information; cost
13 information; pricing information; sales information; customer, license, supplier, and
14 vendor information; technical and development information about a party’s
15 products; comparative product test results; business plans; marketing strategies;
16 competitive strategies; or any other information that would put the Producing
17 Party at a competitive disadvantage if the information became known to
18 employees of the Receiving Party or third parties.

19 5. All Protected Information (i.e., “Confidential” or “Confidential -
20 Attorneys’ Eyes Only” information) that has been obtained from a party during the
21 course of this proceeding shall be used only for the purpose of this litigation and not
22 for any other business, proceeding, litigation, or other purpose whatsoever. Further,
23 such information may not be disclosed to anyone except as provided in this Order.
24 Counsel for a party may give advice and opinions to their client based on evaluation
25 of information designated as Protected Information produced by the other party. For
26 information designated “Confidential - Attorneys’ Eyes Only,” such rendering of
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1 advice and opinions shall not reveal the content of such information except by prior
2 agreement with opposing counsel.

3 6. All documents, or any portion thereof, produced for inspection only
4 (i.e., copies have not yet been provided to the Receiving Party) shall be deemed
5 “Confidential - Attorneys’ Eyes Only.” If a copy of any such document is
6 requested after inspection, the document shall be deemed “Confidential” or
7 “Confidential - Attorneys’ Eyes Only” only if labeled or marked in conformity
8 with Paragraph 2, with access and dissemination limited as set forth in Paragraphs
9 11-12.

10 7. Information disclosed at a deposition or other testimony may be
11 designated as “Confidential” or “Confidential - Attorneys’ Eyes Only” at the time of
12 the testimony or deposition, or within thirty (30) days following receipt of the
13 transcript, and shall be subject to the provisions of this Order. Additional
14 information disclosed during a deposition or other testimony may be designated as
15 “Confidential” or “Confidential - Attorneys’ Eyes Only” by notifying the other
16 party, in writing, within thirty (30) days after receipt of the transcript, of the
17 specific pages of the transcript that should also be so designated. Unless otherwise
18 agreed on the record of the deposition or other testimony, all transcripts shall be
19 treated as “Confidential - Attorneys’ Eyes Only” for a period of thirty (30) days after
20 their receipt, and the transcript shall not be disclosed by a non-designating party to
21 persons other than those persons named or approved according to Paragraph 12 to
22 review documents or materials designated “Confidential - Attorneys’ Eyes Only” on
23 behalf of that non-designating party.

24 8. All exhibits, pleadings, discovery responses, documents or things,
25 testimony or other submissions, filed with the Court pursuant to this action that have
26 been designated “Confidential” or “Confidential - Attorneys’ Eyes Only” by any
27 party, or any pleading or memorandum purporting to reproduce, paraphrase, or
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1 otherwise disclose such information designated as Protected Information, shall be
2 marked with the legend “Confidential” or “Confidential - Attorneys’ Eyes Only,” or
3 with a substantially similar variation thereof, and shall be filed according to the
4 procedures outlined in L.R. 79-5.1.

5 9. As used in this Protective Order, “Outside Counsel” refers
6 exclusively to: the attorneys, paralegals, secretaries, and other support staff
7 employed in the following law firms: McGuireWoods LLP, Baker & McKenzie
8 LLP, and Stephens Friedland LLP, or such additional person as may be ordered
9 by the Court, or subsequently may be agreed upon by the parties.

10 10. As used in this Protective Order, “independent experts or consultants”
11 refers exclusively to a person, who has not been and is not an employee of a
12 party or scheduled to become an employee in the near future, and who is retained or
13 employed as a testifying or non-testifying expert for purposes of this litigation,
14 either full or part-time, by or at the direction of a party or counsel of a party.

15 11. Material designated as “Confidential” that has been obtained from a
16 party during the course of this proceeding may be disclosed or made available only
17 to the Court, to Outside Counsel, and to the persons designated below:

18 (a) a party, or an officer, director, or designated employee of a party deemed
19 necessary by Outside Counsel to aid in the prosecution, defense, or settlement of
20 this action;

21 (b) independent experts or consultants (together with their clerical staff) retained
22 by such Outside Counsel to assist in the prosecution, defense, or settlement of
23 this action;

24 (c) court reporter(s) employed in this action;

25 (d) agents of Outside Counsel, including professional jury or trial consultants
26 retained in connection with the litigation and mock jurors retained by such a
27 consultant to assist them in their work, and other professional vendors needed to
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1 perform various services such as, for example, copying, drafting of exhibits, and
2 support and management services, including vendors retained by the parties, or
3 by counsel for parties, for the purpose of encoding, loading into a computer and
4 storing and maintaining or information control and retrieval purposes, transcripts
5 of depositions, hearings, trials, pleadings, exhibits marked by a party, or
6 attorneys' work product, all of which may contain material designated
7 Confidential;

8 (e) witnesses in any deposition or other proceeding of this action;

9 (f) any other persons as to whom the parties in writing agree.

10 12. Material designated as "Confidential - Attorneys' Eyes Only" that
11 has been obtained from a party during the course of this proceeding may be
12 disclosed or made available only to the Court, to Outside Counsel, and to the
13 persons designated below:

14 (a) independent experts or consultants (together with their clerical staff) retained
15 by such Outside Counsel to assist in the prosecution, defense, or settlement of
16 this action;

17 (b) authors and recipients of any material bearing a "Confidential - Attorneys'
18 Eyes Only" designation;

19 (c) court reporter(s) employed in this action;

20 (d) agents of Outside Counsel, including professional jury or trial consultants
21 retained in connection with the litigation and mock jurors retained by such a
22 consultant to assist them in their work, and other professional vendors needed to
23 perform various services such as, for example, copying, drafting of exhibits, and
24 support and management services, including vendors retained by the parties,
25 or by Outside Counsel, for the purpose of encoding, loading into a computer and
26 storing and maintaining for information control and retrieval purposes,
27 transcripts of depositions, hearings, trials, pleadings, exhibits marked by a party,
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1 or attorneys' work product, all of which may contain material designated
2 Confidential - Attorney Eyes Only;

3 (e) witnesses in any deposition or other proceeding in this action who are the
4 author or recipient of the "Confidential - Attorney Eyes Only" material, or who,
5 based on evidence, have seen the material in the past; and

6 (f) any other persons as to whom the parties in writing agree.

7 13. The right of any independent expert or consultant to receive any
8 Protected Information will be subject to the advance approval of such expert or
9 consultant by the designating party or by permission of the Court.

10 (a) The party seeking approval of an independent expert or consultant must
11 provide the designating party with a written notification, which includes the name
12 and curriculum vitae of the proposed independent expert or consultant that
13 includes a description of the expert or consultant's employment and consulting
14 history during the past four years, and an executed copy of the form attached
15 hereto as Exhibit 1, at least ten (10) calendar days in advance of providing any
16 Protected Information of the designating party to the expert or consultant.

17 (b) If the designating party does not convey an objection to the proposed
18 disclosure within ten (10) calendar days of receipt of the written notification,
19 the designating party will be deemed to have waived objection to the disclosure
20 and its agreement will be assumed.

21 (c) If within ten (10) calendar days of receipt of the written
22 notification, the designating party gives notification of its objection to the
23 disclosure of Protected Information to the expert or consultant identified by written
24 notice, there shall be no disclosure to the expert/consultant at issue until such
25 objection is resolved. The objection shall state the reasons why the designating
26 party believes the identified individuals should not receive Confidential Material.

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1 (d) If after meeting and conferring, the Parties do not otherwise resolve
2 the dispute, the party seeking approval of an expert or consultant must seek relief
3 from the Court, by way of filing a motion within fourteen (14) days of the meet and
4 confer. The filing and pendency of any such motion shall not limit, delay, or
5 defer any disclosure of the Protected Information to persons as to whom no such
6 objection has been made, nor shall it delay or defer any other pending discovery.

7 14. All Protected Information used at a hearing or at trial shall
8 become public absent a separate order from the Court upon written motion and
9 sufficient cause shown. If any party desires at a hearing or at trial to offer into
10 evidence Protected Information, or to use Protected Information in such a way as to
11 reveal its nature or contents, such offers or use shall be made only upon the taking
12 of all steps reasonably available to preserve the confidentiality of such Protected
13 Information. The party seeking to use the Protected Information must provide the
14 party that produced such Protected Information sufficient time to request an order
15 from the Court to limit the offer of such Protected Information. The party seeking to
16 use the Protected Information stipulates that good cause exists and agrees to assist in
17 any application or motion to preserve the confidentiality of such Protected
18 Information.

19 15. Any Protected Information may be used in the course of any deposition
20 taken of the party producing such Protected Information or its employees without
21 consent, or otherwise used in any deposition with the consent of the party producing
22 such Protected Information, subject to the condition that when such Protected
23 Information is so used, the party who made the designation may notify the reporter
24 that the portion of the deposition in any way pertaining to such Protected
25 Information or any portion of the deposition relevant thereto is being taken pursuant
26 to this Order. Further, whenever any Protected Information is to be discussed or
27 disclosed in a deposition, any party claiming such confidentiality may exclude from
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1 the room any person not entitled to receive such Protected Information pursuant to
2 the terms of this Order.

3 16. All challenges to confidentiality designations shall proceed under Local
4 Rules 37.1 through 37.4.

5 17. Notwithstanding anything contrary herein, if a party through
6 inadvertence or mistake produces discovery of any Protected Information without
7 marking it with the legend “Confidential” or “Confidential - Attorneys’ Eyes Only,”
8 or a substantially similar variation thereof, or marks it with an incorrect level of
9 confidentiality, the Producing Party may give written notice to the Receiving Party
10 that the exhibit, pleading, discovery response, document or thing, or testimony
11 contains Protected Information and should be treated as such in accordance with the
12 provisions of this Protective Order. The Producing Party shall, upon learning of the
13 disclosure: (i) promptly notify the person(s) to whom the disclosure was made that it
14 contains Protected Information subject to this Protective Order; (ii) promptly use
15 best efforts to retrieve the disclosed information from the person(s) to whom
16 disclosure was inadvertently made and have such person(s) execute Exhibit 1 to this
17 Protective Order; and (iii) promptly make all reasonable efforts to preclude further
18 dissemination or use by the person(s) to whom disclosure was inadvertently made.
19 The inadvertent or unintentional disclosure by a party of Protected Information,
20 regardless of whether the information was so designated at the time of disclosure,
21 shall not be deemed a waiver in whole or in part of a party's claim of confidentiality
22 either as to the specific information disclosed or as to any other information relating
23 thereto or on the same or related subject matter, provided that the non-producing
24 party is notified and properly marked documents are supplied as provided herein.
25 The Receiving Party shall not be responsible for the disclosure or other distribution
26 of belatedly designated Protected Information as to such disclosure or distribution
27 that may occur before the receipt of such notification of a claim of confidentiality
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1 and such disclosure or distribution shall not be deemed to be a violation of this
2 Protective Order.

3 18. Neither the taking or the failure to take any action to enforce the
4 provisions of this Order, nor the failure to object to any designation or any such
5 action or omission, shall constitute a waiver of any signatory's right to seek and
6 obtain protection or relief, with respect to any claim or defense in this action or any
7 other action including, but not limited to, the claim or defense that any information
8 is or is not proprietary to any party, is or is not entitled to particular protection or
9 that such information embodies trade secret or other Protected Information of any
10 party. The procedures set forth herein shall not affect the rights of the parties to
11 object to discovery on grounds other than those related to trade secrets or other
12 Protected Information claims, nor shall it relieve a party of the necessity of proper
13 responses to discovery requests.

14 19. This Order shall not abrogate or diminish any contractual, statutory, or
15 other legal obligation or right of any party to this Order, as to any third party, with
16 respect to any Protected Information. The fact that Information is designated
17 "Confidential" or "Confidential - Attorneys' Eyes Only" under this Order shall not
18 be deemed to be determinative of what a trier of fact may determine to be
19 confidential or proprietary. This Order shall be without prejudice to the right of any
20 party to bring before the Court the question of:

- 21 (a) whether any particular information is or is not Protected Information;
22 (b) whether any particular information is or is not entitled to a greater or
23 lesser degree of protection than provided hereunder; or
24 (c) whether any particular information is or is not relevant to any issue in
25 this case; provided that in doing so the party complies with the foregoing
26 procedures.

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1 20. The terms of the Protective Order are applicable to Protected
2 Information produced by a non-party, such non-party may designate Protected
3 Information produced by it in connection with this litigation, and that Protected
4 Information is protected by the remedies and relief provided by the Protective
5 Order.

6 21. Within thirty (30) days following the conclusion of litigation between
7 the parties, all information designated as Protected Information, except such
8 documents or information which incorporate or are incorporated into attorney work
9 product (a single copy of which may be retained in counsel's file), shall, upon
10 request, be returned to the Producing Party, or disposed of by the Receiving Party. If
11 disposed of, the Receiving Party shall, upon request, provide the Producing Party
12 with a certificate of disposal.

13 22. The inadvertent production of documents or other material subject to
14 the attorney-client privilege, work product doctrine or any other privilege or
15 immunity does not constitute a waiver of any applicable privilege if after the
16 Producing Party becomes aware of any inadvertent or unintentional disclosure, the
17 Producing Party designates any such documents as within the attorney-client
18 privilege, work product immunity, and/or any other applicable privilege or
19 immunity and requests in writing return of such documents to the Producing Party.
20 Upon request by the Producing Party, the Receiving Party shall immediately retrieve
21 and return any and all copies of such inadvertently produced document(s), including
22 retrieving and returning any and all copies distributed to others (e.g., experts,
23 consultants, vendors). Nothing herein shall prevent the Receiving Party from
24 challenging the propriety of the asserted privilege or immunity designation by
25 submitting a written challenge to the Court; however, the fact of the inadvertent
26 production of the document(s) may not be used as a basis for such challenge. A
27 Receiving Party may not retain any copies of any inadvertently produced document
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1 for any purpose, including the purpose of challenging the propriety of the claim
2 privilege or immunity designation.

3 23. In addition to any other obligation to preserve documents, the
4 Producing Party must preserve any documents recalled under this Paragraph for the
5 duration of this litigation and must add the document to a privilege log.

6 24. The restrictions provided for above shall not terminate upon the
7 conclusion of this lawsuit, but shall continue until further order of this Court. This
8 Protective Order is without prejudice to the right of a party hereto to seek relief from
9 the Court, upon good cause shown, from any of the provisions or restrictions
10 provided herein.

11 25. Absent written consent of the owner of Confidential - Attorneys' Eyes
12 Only information, any Outside Counsel who reviews material so designated, in
13 whole or in part, shall not, for a period commencing upon receipt of such
14 information and ending one year following the conclusion of the above captioned
15 action (including any appeals) engage in any Prosecution Activity (as defined
16 below) substantially related to the subject matter of U.S. Patent No. 6,629,666. This
17 prohibition shall not be imputed to partners, associates, or other colleagues of such
18 individual who did not review the Producing Party's Confidential - Attorneys' Eyes
19 Only information.

20 26. Prosecution Activity shall mean any activity related to the
21 competitive business decisions involving the preparation or prosecution (for any
22 person or entity) of patent applications substantially related to the subject matter
23 of the patent-in-suit, or advising or counseling clients regarding the same,
24 including but not limited to providing any advice, counseling or drafting of
25 claims for any patent application, reexamination, inter-partes review, reissue
26 patent application, or any other post-grant proceeding at any patent office.
27 Prosecution Activity does not include (1) activities by the parties' counsel or the
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1 clients and affiliates in challenging the validity of a patent in reexaminations,
2 inter-partes reviews, or other challenges to patents, or (2) activities by any
3 person subject to this provision for purposes of performing administrative tasks
4 for a pending patent application on which the person is an inventor and which
5 were filed before January 1, 2016. Administrative tasks in this context do not
6 include directly or indirectly (e.g., by advising) drafting or revising patent
7 applications, responses to office actions, amendments, examiner interviews or
8 any invention disclosures used in a patent application that are substantially
9 related to the subject matter of the asserted patents. Administrative tasks are
10 only meant to include submitting prior art to the patent office, or signing of
11 assignments, declarations, powers of attorney, terminal disclaimers and other
12 documents not affecting the scope of the disclosure or the claims. Nothing in
13 this Paragraph shall prevent any attorney from sending non-confidential prior art
14 to an attorney involved in patent prosecution for purposes of ensuring that such
15 prior art is submitted to the U.S. Patent and Trademark Office (or any similar
16 agency or foreign government) to assist a patent applicant in complying with its
17 duty of candor. Nothing in this provision shall prohibit any attorney of record in
18 these actions from discussing any aspect of this case that is reasonably necessary
19 for the prosecution or defense of any claim or counterclaim in this action with
20 his/her client.

21 D. MISCELLANEOUS

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

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

3 3. Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. If a Party's request to file Protected Material
7 under seal is denied by the court, then the Receiving Party may file the information
8 in the public record unless otherwise instructed by the court.

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10 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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Dated: 2/8/17_____, 2016

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/S/
Hon. Suzanne H. Segal
UNITED STATES MAGISTRATE
JUDGE

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EXHIBIT 1: CONFIDENTIALITY UNDERTAKING

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SHINHEUNG PRECISION CO. LTD.,

Plaintiff,

v.

BIXOLON CO., LTD. and BIXOLON
AMERICA, INC.,

Defendants.

Case No. 2:16-cv-00109-CAS (SSx)

**CONFIDENTIALITY
UNDERTAKING**

Hon. Christina A. Snyder
District Judge

[Discovery Document: Referred to
Magistrate Judge Suzanne H. Segal]

CONFIDENTIALITY UNDERTAKING

I, _____, [print or type full name], of

_____ [print or type full address, and identify company,
partnership or organization and its address if applicable], declare under penalty of
perjury that I have read in its entirety and understand the Protective Order that was
issued by the United States District Court for the Central District of California on in
the above-captioned action. I, and my above-identified company, partnership or
organization, agree to comply with and be bound by all the terms of this Protective
Order and I, and my above-identified company, partnership or organization,
understand and acknowledge that failure to so comply could expose me and my

1 above-identified company, partnership or organization to sanctions and punishment
2 in the nature of contempt. I solemnly promise, on my own behalf and on behalf of
3 all staff, stenographic, and clerical employees whose duties and responsibilities
4 require access to such materials, that there will be no disclosure in any manner of
5 any information or item that is subject to this Protective Order to any person or
6 entity except in strict compliance with the provisions of this Order.
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9 I, and my above-identified company, partnership or organization, further
10 agree to submit to the jurisdiction of the United States District Court for the Central
11 District of California for the purpose of enforcing the terms of this Protective
12 Order, even if such enforcement proceedings occur after termination of this action.
13

14 I am a duly authorized representative of _____
15 [identify company, partnership or organization if applicable] and have full authority
16 to enter into this Undertaking on behalf of the above-identified company,
17 partnership or organization as of the date set forth below.
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19 I, and my above-identified company, partnership or organization, hereby
20 appoint, _____ [print or type full name], of
21 _____ [print or type
22 full address and telephone number], as a California agent for service of process in
23 connection with this action or any proceedings related to enforcement of this
24 Protective Order.
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1 Date: _____

2 City and State where sworn and signed:

3 _____

4 _____

5 _____

6 Printed name: _____

7 _____

8 _____

9 Signature: _____

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