

1 SEDGWICK LLP
 2 Valerie D. Rojas (State Bar No. 180041)
valerie.rojas@sedgwicklaw.com
 3 Andrea J. Giovannone (State Bar No. 287358)
andrea.giovannone@sedgwicklaw.com
 4 801 South Figueroa Street, 19th floor
 5 Los Angeles, California 90017-5556
 6 Telephone: 213.426.6900
 7 Facsimile: 877.547.6580
 8 Attorneys for Defendant STATE FARM GENERAL
 9 INSURANCE COMPANY

10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13

14 JOHN R. FUCHS, an individual, and
 15 ROBYN R. FUCHS, an individual;

16 Plaintiffs,

17 v.

18 STATE FARM GENERAL
 19 INSURANCE COMPANY, an Illinois
 20 corporation; and Does 1 through 50,
 21 Inclusive,

22 Defendants.

CASE NO. 2:16-cv-01844-BRO-GJS

**[State Court Case No. SC125394,
 Filed February 11, 2016]**

**STIPULATED PROTECTIVE
 ORDER GOVERNING
 CONFIDENTIAL INFORMATION**

23
 24 Upon joint stipulation of Plaintiffs John R. Fuchs and Robyn R. Fuchs
 25 (“Plaintiffs”) and Defendant State Farm General Insurance Company ("Defendant"
 26 or "State Farm"), by and through their respective counsel of record, and **FOR**
 27 **GOOD CAUSE SHOWN, THE COURT HEREBY FINDS AND ORDERS AS**
 28 **FOLLOWS:**



1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 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.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets and other valuable research,
13 development, commercial, financial, technical and/or proprietary information for
14 which special protection from public disclosure and from use for any purpose other
15 than prosecution of this action is warranted. Such confidential and proprietary
16 materials and information consist of, among other things, trade secrets related to
17 the claims handling process and claims system that the party in good faith believes
18 will, if disclosed, have the effect of causing harm to that party's competitive
19 position, confidential business practices, financial information, or other
20 confidential research, development, or commercial information (including
21 information implicating the privacy rights of third parties), information otherwise
22 generally unavailable to the public, or which may be privileged or otherwise
23 protected from disclosure under state or federal statutes, court rules, case decisions,
24 or common law. Accordingly, to expedite the flow of information, to facilitate the
25 prompt resolution of disputes over confidentiality of discovery materials, to
26 adequately protect information the parties are entitled to keep confidential, to
27 ensure that the parties are permitted reasonable necessary uses of such material in
28 preparation for and in the conduct of trial, to address their handling at the end of

1 the litigation, and serve the ends of justice, a protective order for such information
2 is justified in this matter. It is the intent of the parties that information will not be
3 designated as confidential for tactical reasons and that nothing be so designated
4 without a good faith belief that it has been maintained in a confidential, non-public
5 manner, and there is good cause why it should not be part of the public record of
6 this case.

7 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

8 The parties further acknowledge, as set forth in Section 12.3, below, that this
9 Stipulated Protective Order does not entitle them to file confidential information
10 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
11 and the standards that will be applied when a party seeks permission from the court
12 to file material under seal.

13 There is a strong presumption that the public has a right of access to judicial
14 proceedings and records in civil cases. In connection with non-dispositive
15 motions, good cause must be shown to support a filing under seal. *See Kamakana*
16 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
17 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
18 *Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
19 protective orders require good cause showing), and a specific showing of good
20 cause or compelling reasons with proper evidentiary support and legal justification,
21 must be made with respect to Protected Material that a party seeks to file under
22 seal. The parties' mere designation of Disclosure or Discovery Material as
23 CONFIDENTIAL does not—without the submission of competent evidence by
24 declaration, establishing that the material sought to be filed under seal qualifies as
25 confidential, privileged, or otherwise protectable—constitute good cause.

26 Further, if a party requests sealing related to a dispositive motion or trial,
27 then compelling reasons, not only good cause, for the sealing must be shown, and
28 the relief sought shall be narrowly tailored to serve the specific interest to be

1 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
2 2010). For each item or type of information, document, or thing sought to be filed
3 or introduced under seal in connection with a dispositive motion or trial, the party
4 seeking protection must articulate compelling reasons, supported by specific facts
5 and legal justification, for the requested sealing order. Again, competent evidence
6 supporting the application to file documents under seal must be provided by
7 declaration.

8 Any document that is not confidential, privileged, or otherwise protectable
9 in its entirety will not be filed under seal if the confidential portions can be
10 redacted. If documents can be redacted, then a redacted version for public
11 viewing, omitting only the confidential, privileged, or otherwise protectable
12 portions of the document, shall be filed. Any application that seeks to file
13 documents under seal in their entirety should include an explanation of why
14 redaction is not feasible.

15 2. DEFINITIONS

16 2.1 Action: this pending federal lawsuit, entitled *John R. Fuchs, et al. v.*
17 *State Farm General Insurance Company*, Case No. 2:16-cv-01844-BRO-GJS.

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

20 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
21 how it is generated, stored or maintained) or tangible things that qualify for
22 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
23 the Good Cause Statement.

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
25 their support staff).

26 2.5 Designating Party: a Party or Non-Party that designates information
27 or items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a
6 matter pertinent to the litigation who has been retained by a Party or its counsel to
7 serve as an expert witness or as a consultant in this Action.

8 2.8 House Counsel: attorneys who are employees of a party to this
9 Action. House Counsel does not include Outside Counsel of Record or any other
10 outside counsel.

11 2.9 Non-Party: any natural person, partnership, corporation, association
12 or other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: attorneys who are not employees of a
14 party to this Action but are retained to represent or advise a party to this Action
15 and have appeared in this Action on behalf of that party or are affiliated with a law
16 firm that has appeared on behalf of that party, and includes support staff.

17 2.11 Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 2.13 Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL.”
28

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 3. SCOPE

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

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

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in full force and effect until a Designating
14 Party agrees otherwise in writing or a Court Order otherwise directs. Final
15 disposition shall be deemed to be the later of (1) dismissal of all claims and
16 defenses in this Action, with or without prejudice; and (2) final judgment herein
17 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
18 reviews of this Action, including the time limits for filing any motions or
19 applications for extension of time pursuant to applicable law. To the extent
20 permitted by law, the Court shall retain jurisdiction to enforce, modify, or
21 reconsider this Protective Order, even after this action is terminated.

22 Once a case proceeds to trial, information that was designated as
23 CONFIDENTIAL or maintained pursuant to this protective order used or
24 introduced as an exhibit at trial, not under seal, becomes public and will be
25 presumptively available to all members of the public, including the press, unless
26 compelling reasons supported by specific factual findings to proceed otherwise are
27 made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
28 (distinguishing “good cause” showing for sealing documents produced in

1 discovery from “compelling reasons” standard when merits-related documents are
2 part of court record).

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
2 contains protected material. If only a portion of the material on a page qualifies for
3 protection, the Producing Party also must clearly identify the protected portion(s)
4 (e.g., by making appropriate markings in the margins).

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

17 (b) for testimony given in depositions that the Designating Party
18 identifies the Disclosure or Discovery Material on the record, before the close of
19 the deposition all protected testimony.

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such

1 material. Upon timely correction of a designation, the Receiving Party must make
2 reasonable efforts to assure that the material is treated in accordance with the
3 provisions of this Order.

4
5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's
8 Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be
12 on the Designating Party. Frivolous challenges, and those made for an improper
13 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
14 parties) may expose the Challenging Party to sanctions. Unless the Designating
15 Party has waived or withdrawn the confidentiality designation, all parties shall
16 continue to afford the material in question the level of protection to which it is
17 entitled under the Producing Party's designation until the Court rules on the
18 challenge. Any party may request from the Producing Party a change in the
19 designation of any item or information. Such request shall be in writing, state the
20 grounds, and be served on all counsel including counsel for the Producing Party.
21 The party requesting a change in the designation or any item or information must
22 give the Designating Party two business days to respond before initiating the
23 dispute resolution process under Local Rule 37.1 et seq.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that
26 is disclosed or produced by another Party or by a Non-Party in connection with this
27 Action only for prosecuting, defending or attempting to settle this Action,
28 including any appeals. Such Protected Material may be disclosed only to the

1 categories of persons and under the conditions described in this Order. When the
2 Action has been terminated, a Receiving Party must comply with the provisions of
3 section 13 below (FINAL DISPOSITION).

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

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

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

14 (b) the officers, directors, and employees (including House Counsel)
15 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) professional jury or trial consultants, mock jurors, and
22 Professional Vendors to whom disclosure is reasonably necessary for this Action
23 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
24 A);

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

27 (h) during their depositions, witnesses, and attorneys for witnesses, in
28 the Action to whom disclosure is reasonably necessary provided: (1) the deposing

1 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
2 they will not be permitted to keep any confidential information unless they sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
4 agreed by the Designating Party or ordered by the court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material may
6 be separately bound by the court reporter and may not be disclosed to anyone
7 except as permitted under this Stipulated Protective Order; and

8 (i) any mediator or settlement officer, and their supporting personnel,
9 mutually agreed upon by any of the parties engaged in settlement discussions.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

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

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served
24 with the subpoena or court order shall not produce any information designated in
25 this action as “CONFIDENTIAL” before a determination by the court from which
26 the subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this Action
2 to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by
6 a Non-Party in this Action and designated as "CONFIDENTIAL." Such
7 information produced by Non-Parties in connection with this litigation is protected
8 by the remedies and relief provided by this Order. Nothing in these provisions
9 should be construed as prohibiting a Non-Party from seeking additional
10 protections.

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

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

18 (2) promptly provide the Non-Party with a copy of the
19 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
20 reasonably specific description of the information requested; and

21 (3) make the information requested available for inspection by
22 the Non-Party, if requested.

23 (c) If the Non-Party fails to seek a protective order from this court
24 within 14 days of receiving the notice and accompanying information, the
25 Receiving Party may produce the Non-Party's confidential information responsive
26 to the discovery request. If the Non-Party timely seeks a protective order, the
27 Receiving Party shall not produce any information in its possession or control that
28

1 is subject to the confidentiality agreement with the Non-Party before a
2 determination by the court. Absent a court order to the contrary, the Non-Party
3 shall bear the burden and expense of seeking protection in this court of its
4 Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

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12. MISCELLANEOUS

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

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

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

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel
2 are entitled to retain an archival copy of all pleadings, motion papers, trial,
3 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
4 and trial exhibits, expert reports, attorney work product, and consultant and expert
5 work product, even if such materials contain Protected Material. Any such
6 archival copies that contain or constitute Protected Material remain subject to this
7 Protective Order as set forth in Section 4 (DURATION).

8 14. VIOLATION

9 Any violation of this Order may be punished by appropriate measures
10 including, without limitation, contempt proceedings and/or monetary sanctions.
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12
13 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

14
15 DATED: September 6, 2016



16 GAIL J. STANDISH
17 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 September ____, 2016, in the case of *John R. Fuchs, et al. v. State Farm General
Insurance Company*, Case No. 2:16-cv-01844-BRO-GJS. 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 enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____
[print or type full name] of _____
[print or type full address and telephone number] as my California agent for
service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____ City and State where sworn and signed:

Printed name: _____
Signature: _____