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

DAZADI, INC., a California corporation,
Plaintiff,
v.
SPORT SQUAD, LLC, a Maryland
limited liability company; SPORT
SQUAD, INC., a Maryland company,
and DOES 1-10, inclusive,
Defendants.

Case No.: 2:17-cv-00081-SVW (Ex)

[DISCOVERY MATTER]

~~proposed~~
PROTECTIVE ORDER

Honorable Stephen V. Wilson

[PROPOSED] PROTECTIVE ORDER

1 1. A. PURPOSES AND LIMITATIONS

2 As the parties have represented that discovery in this action is likely to
3 involve production of confidential, proprietary, or private information for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted, this Court enters the following
6 Protective Order. This Order does not confer blanket protections on all disclosures
7 or responses to discovery. The protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential
9 treatment under the applicable legal principles. Further, as set forth in Section 12.3,
10 below, this Protective Order does not entitle the parties to file confidential
11 information under seal. Rather, when the parties seek permission from the court to
12 file material under seal, the parties must comply with Civil Local Rule 79-5 and
13 with any pertinent orders of the assigned District Judge and Magistrate Judge.

14 B. GOOD CAUSE STATEMENT

15 In light of the nature of the allegations, claims and counter-claims in this case
16 and the parties' representations that discovery in this case will involve the
17 production of confidential records, and in order to expedite the flow of information,
18 to facilitate the prompt resolution of disputes over confidentiality of discovery
19 materials, to adequately protect information the parties are entitled to keep
20 confidential, to ensure that the parties are permitted reasonable necessary uses of
21 such material in connection with this action, to address their handling of such
22 material at the end of the litigation, and to serve the ends of justice, a protective
23 order for such information is justified in this matter. The parties shall not designate
24 any information/documents as confidential without a good faith belief that such
25 information/documents have been maintained in a confidential, non-public manner,
26 and that there is good cause or a compelling reason why it should not be part of the
27 public record of this case. Additionally, this action is likely to involve customer
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1 lists, seller lists and other valuable financial and/or proprietary information for
2 which special protection from public disclosure and from use for any purpose other
3 than prosecution of this action is warranted. Such confidential and proprietary
4 materials and information consist of, among other things, confidential business and
5 financial records, including the Parties' marketing and sales strategies and Non-
6 Party business records from third-party retailers (including information implicating
7 privacy rights of third-party affiliates who advertised for sale and sold products at
8 issue). This information is otherwise generally unavailable to the public, and may
9 be protected from disclosure as trade secrets under state or federal statutes, court
10 rules, case decisions, or common law.

11 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

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

17 2. DEFINITIONS

18 2.1 Action: The instant federal lawsuit titled: *Dazadi, Inc. v. Sport*
19 *Squad, LLC, et al.*, Case No.: 2:17-cv-00081-SVW (Ex).

20 2.2 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
23 how generated, stored or maintained) or tangible things produced by the Designating Party
24 and that the Designating Party believes in good faith constitutes confidential research,
25 development, financial or commercial information.

26 2.4 "ATTORNEYS' EYES ONLY" Information or Items: extremely
27 sensitive "Confidential" Information whose disclosure to another Party or non-party would
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1 create a risk of substantial harm to the ability of the Designating Party and/or its affiliates
2 to conduct business in a competitive fashion.

3 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
4 their support staff).

5 2.6 Designating Party: a Party or Non-Party that designates information or
6 items that it produces in disclosures or in responses to discovery as
7 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

8 2.7 Disclosure or Discovery Material: all Protected Material, regardless of
9 the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced or
11 generated in disclosures or responses to discovery in this matter.

12 2.8 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the Action who has been retained by a Party or its counsel to serve as an
14 expert witness or as a consultant in this Action.

15 2.9 House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.10 Information: content of Documents or Testimony.

19 2.11 Non-Party: any natural person, partnership, corporation, association, or
20 other legal entity not named as a Party to this action.

21 2.12 Outside Counsel of Record: attorneys who are not employees of a
22 party to this Action but are retained to represent or advise a party to this Action and
23 have appeared in this Action on behalf of that party or are affiliated with a law firm
24 which has appeared on behalf of that party, and includes support staff.

25 2.13 Party: any party to this Action).

26 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

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1 2.15 Protected Material: Documents, Information or Testimony designated as
2 "Confidential" or "Attorneys' Eyes Only" pursuant to the provisions of this Stipulation and
3 Protective Order.

4 2.16 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 2.17 Testimony: means all depositions, declarations or other testimony taken
7 or used in this Proceeding.

8 3. SCOPE

9 The protections conferred by this Order cover not only Protected Material (as
10 defined above), but also (1) any information copied from Protected Material; (2) all
11 copies, or excerpts, of Protected Material; and (3) any deposition testimony,
12 conversations, or presentations by Parties or their Counsel that might reveal
13 Protected Material, other than during a court hearing or at trial.

14 Any use of Protected Material during a court hearing or at trial shall be
15 governed by the orders of the presiding judge. This Order does not govern the use
16 of Protected Material during a court hearing or at trial.

17 4. DURATION

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

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

16 5.2 Manner and Timing of Designations. Except as otherwise provided in
17 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
18 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
19 under this Order must be clearly so designated before the material is disclosed or
20 produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions), that the Producing Party affix
24 at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
25 ATTORNEYS' EYES ONLY" to each page that contains protected material. If
26 only a portion or portions of the material on a page qualifies for protection, the
27 Producing Party also must clearly identify the protected portion(s) (e.g., by making
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1 appropriate markings in the margins).

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

14 (b) for testimony given in depositions that the Designating Party identifies
15 on the record, before the close of the deposition as protected testimony.

16 (c) for information produced in some form other than documentary and
17 for any other tangible items, that the Producing Party affix in a prominent place on
18 the exterior of the container or containers in which the information is stored the
19 legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." If only a portion or
20 portions of the information warrants protection, the Producing Party, to the extent
21 practicable, shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive
24 the Designating Party's right to secure protection under this Order for such material.
25 Upon timely correction of a designation, the Receiving Party must make reasonable
26 efforts to assure that the material is treated in accordance with the provisions of this
27 Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be on
8 the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed only to the categories of persons and under the
20 conditions described in this Order. When the Action has been terminated, a
21 Receiving Party must comply with the provisions of Section 13 below.

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

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated
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1 “CONFIDENTIAL” only to:

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

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

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

10 (d) the court and its personnel;

11 (e) private court reporters and their staff to whom disclosure is reasonably
12 necessary for this Action and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A);

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

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

19 (h) during their depositions, witnesses, and attorneys for witnesses, in the
20 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
21 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A); and (2) they will not be permitted to keep any confidential information
23 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
24 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
25 transcribed deposition testimony or exhibits to depositions that reveal Protected
26 Material may be separately bound by the court reporter and may not be disclosed to
27 anyone except as permitted under this Protective Order; and

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

3 7.3 Disclosure of "ATTORNEYS' EYES ONLY" Information or Items.

4 Unless otherwise ordered by the court or permitted in writing by the Designating
5 Party, a Receiving Party may disclose any information or item designated
6 "CONFIDENTIAL" only to:

7 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
8 as employees of said Outside Counsel of Record to whom it is reasonably necessary
9 to disclose the information for this Action;

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

13 (c) the court and its personnel;

14 (d) private court reporters and their staff to whom disclosure is reasonably
15 necessary for this Action and who have signed the "Acknowledgment and
16 Agreement to Be Bound" (Exhibit A);

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

20 (f) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information; and

22 (g) any mediator or settlement officer, and their supporting personnel,
23 mutually agreed upon by any of the parties engaged in settlement discussions.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
25 PRODUCED IN OTHER LITIGATION

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

2 (a) promptly notify in writing the Designating Party. Such notification
3 shall include a copy of the subpoena or court order unless prohibited by law;

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

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

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

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

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

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

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

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

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

12 (c) If a Non-Party represented by counsel fails to commence the process
13 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
14 notice and accompanying information or fails contemporaneously to notify the
15 Receiving Party that it has done so, the Receiving Party may produce the Non-
16 Party's confidential information responsive to the discovery request. If an
17 unrepresented Non-Party fails to seek a protective order from this court within 14
18 days of receiving the notice and accompanying information, the Receiving Party
19 may produce the Non-Party's confidential information responsive to the discovery
20 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
21 not produce any information in its possession or control that is subject to the
22 confidentiality agreement with the Non-Party before a determination by the court
23 unless otherwise required by the law or court order. Absent a court order to the
24 contrary, the Non-Party shall bear the burden and expense of seeking protection in
25 this court of its Protected Material.

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
9 OTHERWISE PROTECTED MATERIAL

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

20 12. MISCELLANEOUS

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

23 12.2 Right to Assert Other Objections. No Party waives any right it
24 otherwise would have to object to disclosing or producing any information or item
25 on any ground not addressed in this Protective Order. Similarly, no Party waives
26 any right to object on any ground to use in evidence of any of the material covered
27 by this Protective Order.

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1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
3 orders of the assigned District Judge and Magistrate Judge. Protected Material may
4 only be filed under seal pursuant to a court order authorizing the sealing of the
5 specific Protected Material at issue. If a Party's request to file Protected Material
6 under seal is denied by the court, then the Receiving Party may file the information
7 in the public record unless otherwise instructed by the court.

8 13. FINAL DISPOSITION

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

27 14. The Parties and all signatories to the Acknowledgement attached hereto
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1 as Exhibit A agree to be bound by this Stipulation and Protective Order pending its
2 approval and entry by the Court. In the event that the Court modifies this Stipulation
3 and Protective Order, or in the event that the Court enters a different Protective
4 Order, the Parties agree to be bound by this Stipulation and Protective Order until
5 such time as the Court may enter such a different Order. It is the Parties' intent to be
6 bound by the terms of this Stipulation and Protective Order pending its entry so as to
7 allow for immediate production of Protected Materials under the terms herein.

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9 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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11 DATED: August 2, 2017



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13 HON. CHARLES F. EICK
14 United States Magistrate Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Protective Order that was issued
7 by the United States District Court for the Central District of California on August
8 ____, 2017 in the case of *Dazadi, Inc. v. Sport Squad, LLC, et al.*, Case No.: 2:17-cv-
9 00081 SVW (Ex). I agree to comply with and to be bound by all the terms of this
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is subject
13 to this Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Protective Order, even if such enforcement proceedings occur after termination of
18 this action. I hereby appoint _____ [print or type full
19 name] of _____ [print or type full address
20 and telephone number] as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

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25 Printed name: _____

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27 Signature: _____

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