

1 **BRYAN CAVE LLP**
 Jonathan G. Fetterly (SBN 228612)
 2 *jon.fetterly@bryancave.com*
 Three Embarcadero Center, 7th Floor
 3 San Francisco, CA 94111
 Telephone: (415) 675-3400
 4 Facsimile: (415) 675-3434

5 Colin D. Dailey (SBN 293942)
colin.dailey@bryancave.com
 6 120 Broadway, Suite 300
 Santa Monica, CA 90401
 7 Telephone: (310) 576-2100
 Facsimile: (310) 576-2200

8 Attorneys for Defendant
 9 U.S. BANK NATIONAL ASSOCIATION

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

13 **GEORGE W. BAKER,**
 14 **Plaintiff,**
 15 **vs.**
 16 **UNITED RECOVERY, INC. dba**
RECOVERY MANAGEMENT, U.S.
 17 **BANK, N.A., and DOES 1 through 10**
 18 **inclusive**
 19 **Defendants.**

Case No. 2:17-CV-2019-VAP(JEMx)

Assigned to Hon. Virginia A. Phillips

**[PROPOSED] ORDER GRANTING
 STIPULATED PROTECTIVE
 ORDER**

Complaint Filed: March 14, 2017
 FAC Filed: May 24, 2017
 Trial Date: March 13, 2018

20 **U.S. BANK NATIONAL**
ASSOCIATION,
 21 **Counterclaimant,**
 22 **vs.**
 23 **GEORGE W. BAKER, and ROES 1**
 24 **through 10 inclusive**
 25 **Counterclaim-**
 26 **defendants.**

BRYAN CAVE LLP
 120 BROADWAY, SUITE 300
 SANTA MONICA, CA 90401-2386

1 **1. 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 **2. GOOD CAUSE STATEMENT**

12 This action is likely to involve confidential customer, commercial, financial,
13 technical and/or proprietary information for which special protection from public
14 disclosure and from use for any purpose other than prosecution of this action is
15 warranted. Such confidential and proprietary materials and information consist of,
16 among other things, confidential business or financial information, information
17 regarding confidential business practices, or other confidential research,
18 development, or commercial information (including information implicating privacy
19 rights of third parties), information otherwise generally unavailable to the public, or
20 which may be privileged or otherwise protected from disclosure under state or
21 federal statutes, court rules, case decisions, or common law. Accordingly, to
22 expedite the flow of information, to facilitate the prompt resolution of disputes over
23 confidentiality of discovery materials, to adequately protect information the parties
24 are entitled to keep confidential, to ensure that the parties are permitted reasonable
25 necessary uses of such material in preparation for and in the conduct of trial, to
26 address their handling at the end of the litigation, and serve the ends of justice, a
27 protective order for such information is justified in this matter. It is the intent of the
28 parties that information will not be designated as confidential for tactical reasons

1 and that nothing be so designated without a good faith belief that it has been
2 maintained in a confidential, non-public manner, and there is good cause why it
3 should not be part of the public record of this case.

4 **3. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
5 **SEAL**

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

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

24 Further, if a party requests sealing related to a dispositive motion or trial, then
25 compelling reasons, not only good cause, for the sealing must be shown, and the
26 relief sought shall be narrowly tailored to serve the specific interest to be protected.
27 *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
28 each item or type of information, document, or thing sought to be filed or introduced

1 under seal in connection with a dispositive motion or trial, the party seeking
2 protection must articulate compelling reasons, supported by specific facts and legal
3 justification, for the requested sealing order. Again, competent evidence supporting
4 the application to file documents under seal must be provided by declaration.

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

11 **4. DEFINITIONS**

12 4.1 Action: this federal lawsuit.

13 4.2 Challenging Party: a Party or Non-Party that challenges the designation
14 of information or items under this Order.

15 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
16 how it is generated, stored or maintained) or tangible things that qualify for
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
18 the Good Cause Statement.

19 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 4.5 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 4.6 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

28

1 4.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 4.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 4.9 Non-Party: any natural person, partnership, corporation, association or
8 other legal entity not named as a Party to this action.

9 4.10 Outside Counsel of Record: attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm that
12 has appeared on behalf of that party, and includes support staff.

13 4.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 4.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 4.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 4.15 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 **5. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

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

6 **6. DURATION**

7 Once a case proceeds to trial, information that was designated as
8 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
9 as an exhibit at trial becomes public and will be presumptively available to all
10 members of the public, including the press, unless compelling reasons supported by
11 specific factual findings to proceed otherwise are made to the trial judge in advance
12 of the trial. See *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
13 showing for sealing documents produced in discovery from “compelling reasons”
14 standard when merits-related documents are part of court record). Accordingly, the
15 terms of this protective order do not extend beyond the commencement of the trial.

16 **7. DESIGNATING PROTECTED MATERIAL**

17 7.1 Exercise of Restraint and Care in Designating Material for Protection.

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

25 Mass, indiscriminate or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to impose
28

1 unnecessary expenses and burdens on other parties) may expose the Designating
2 Party to sanctions.

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

6 7.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
16 contains protected material. If only a portion of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s)
18 (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed "CONFIDENTIAL." After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine which
25 documents, or portions thereof, qualify for protection under this Order. Then, before
26 producing the specified documents, the Producing Party must affix the
27 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
28 portion of the material on a page qualifies for protection, the Producing Party also

1 must clearly identify the protected portion(s) (e.g., by making appropriate markings
2 in the margins).

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

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

12 7.3 Inadvertent Failures to Designate. An inadvertent failure to designate
13 qualified information or items does not, standing alone, waive the Designating
14 Party's right to secure protection under this Order for such material. Upon
15 correction of a designation or an inadvertent failure to designate, the Receiving
16 Party must make reasonable efforts to assure that the material is treated in
17 accordance with the provisions of this Order.

18 **8. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 8.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37-1 et seq.

24 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
25 joint stipulation pursuant to Local Rule 37-2.

26 8.4 The burden of persuasion in any such challenge proceeding shall be on
27 the Designating Party. Frivolous challenges, and those made for an improper
28 purpose (e.g., to harass or impose unnecessary expenses and burdens on other

1 parties) may expose the Challenging Party to sanctions. Unless the Designating
2 Party has waived or withdrawn the confidentiality designation, all parties shall
3 continue to afford the material in question the level of protection to which it is
4 entitled under the Producing Party's designation until the Court rules on the
5 challenge.

6 **9. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 9.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this
9 Action only for prosecuting, defending or attempting to settle this Action. Such
10 Protected Material may be disclosed only to the categories of persons and under the
11 conditions described in this Order. When the Action has been terminated, a
12 Receiving Party must comply with the provisions of section 13 below (FINAL
13 DISPOSITION).

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

17 9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the Designating Party, a
19 Receiving Party may disclose any information or item designated
20 "CONFIDENTIAL" only to:

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

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

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

1 (d) the court and its personnel;
2 (e) court reporters and their staff;
3 (f) professional jury or trial consultants, mock jurors, and
4 Professional Vendors to whom disclosure is reasonably necessary for this Action
5 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
6 A);

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

9 (h) during their depositions, witnesses, and attorneys for witnesses,
10 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing
11 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
12 they will not be permitted to keep any confidential information unless they sign the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
14 agreed by the Designating Party or ordered by the court. Pages of transcribed
15 deposition testimony or exhibits to depositions that reveal Protected Material may
16 be separately bound by the court reporter and may not be disclosed to anyone except
17 as permitted under this Stipulated Protective Order; and

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

21 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
22 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

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

17 (a) The terms of this Order are applicable to information produced
18 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
19 information produced by Non-Parties in connection with this litigation is protected
20 by the remedies and relief provided by this Order. Nothing in these provisions
21 should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

14 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

23 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
24 **PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without
2 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
3 as the parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted
6 to the court.

7 **14. MISCELLANEOUS**

8 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 14.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order, no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 14.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information
20 in the public record unless otherwise instructed by the court.

21 **15. FINAL DISPOSITION**

22 After the final disposition of this Action, as defined in paragraph 4, within 60
23 days of a written request by the Designating Party, each Receiving Party must return
24 all Protected Material to the Producing Party or destroy such material. As used in
25 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving
28 Party must submit a written certification to the Producing Party (and, if not the same

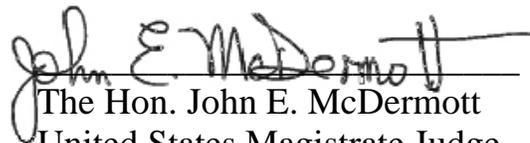
1 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
2 (by category, where appropriate) all the Protected Material that was returned or
3 destroyed and (2) affirms that the Receiving Party has not retained any copies,
4 abstracts, compilations, summaries or any other format reproducing or capturing any
5 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
6 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
8 reports, attorney work product, and consultant and expert work product, even if such
9 materials contain Protected Material. Any such archival copies that contain or
10 constitute Protected Material remain subject to this Protective Order as set forth in
11 Section 4 (DURATION).

12 **16. VIOLATION**

13 Any violation of this Order may be punished by appropriate measures including,
14 without limitation, contempt proceedings and/or monetary sanctions.

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

16
17 Dated: 9/8/2017

18 
19 The Hon. John E. McDermott
20 United States Magistrate Judge
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1 **EXHIBIT A ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

2 I, _____ [print or type full name], of
3 _____ [print or type full address], declare under penalty of perjury
4 that I have read in its entirety and understand the Stipulated Protective Order that
5 was issued by the United States District Court for the Central District of California
6 on [date] in the case of *George W. Baker v. Recovery Management, et al.*, CASE
7 NO. 2:17-CV-2019-VAP(JEMX). I agree to comply with and to be bound by all the
8 terms of this Stipulated Protective Order and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment in the nature of
10 contempt. I solemnly promise that I will not disclose in any manner any information
11 or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order. I further agree to
13 submit to the jurisdiction of the United States District Court for the Central District
14 of California for enforcing the terms of this Stipulated Protective Order, even if such
15 enforcement proceedings occur after termination of this action. I hereby appoint
16 _____ [print or type full name] of
17 _____ [print or type full address and
18 telephone number] as my California agent for service of process in connection with
19 this action or any proceedings related to enforcement of this Stipulated Protective
20 Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 Signature: _____

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