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8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 FABRIC SELECTION, INC., a
 12 California corporation,
 13 Plaintiff,
 14 vs.
 15 MS. BUBBLES, INC., a California
 16 corporation; ROSS STORES, INC., a
 17 Delaware corporation; BEALL'S, INC.,
 a Florida Corporation; BURLINGTON
 18 STORES, INC., a Delaware corporation;
 and DOES 1 through 10, Inclusive,
 19 Defendant.

Case No. 2:17-cv-02622-MWF-SS

~~PROPOSED~~ **STIPULATED
 PROTECTIVE ORDER**

Trial Date: April 24, 2018

Magistrate Judge:
 Hon. Suzanne H. Segal

21 **I. PURPOSES AND LIMITATIONS**

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

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

7 **II. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets, customer and pricing lists and other
9 valuable research, development, commercial, financial, technical and/or proprietary
10 information for which special protection from public disclosure and from use for any
11 purpose other than prosecution of this action is warranted. Such confidential and
12 proprietary materials and information consist of, among other things, confidential
13 business or financial information, information regarding confidential business
14 practices, or other confidential research, development, or commercial information,
15 information otherwise generally unavailable to the public, or which may be privileged
16 or otherwise protected from disclosure under state or federal statutes, court rules, case
17 decisions, or common law. Accordingly, to expedite the flow of information, to
18 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
19 to adequately protect information the parties are entitled to keep confidential, to ensure
20 that the parties are permitted reasonable necessary uses of such material in preparation
21 for and in the conduct of trial, to address their handling at the end of the litigation, and
22 serve the ends of justice, a protective order for such information is justified in this
23 matter. It is the intent of the parties that information will not be designated as
24 confidential for tactical reasons and that nothing be so designated without a good faith
25 belief that it has been maintained in a confidential, non-public manner, and there is
26 good cause why it should not be part of the public record of this case.

1 **III. DEFINITIONS**

2 1. Action: *Fabric Selection, Inc. v. Ms. Bubbles, Inc., et al.* Case No.
3 2:17-cv-02622-MWF-SS.

4 2. Challenging Party: a Party or Non-Party that challenges the designation
5 of information or items under this Order.

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

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

12 5. Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

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

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

22 8. “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY”
23 Information or Items: information (regardless of how it is generated, stored or
24 maintained) or tangible things that qualify for protection under Federal Rule of Civil
25 Procedure 26(c), and as specified above in the Good Cause Statement which are
26 particularly sensitive, for which the disclosure to another party in this action is likely
27 to significantly harm the disclosing party’s competitive position, or the disclosure of
28 which would contravene an obligation of confidentiality to a third person or to a Court.

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

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

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

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

13 13. Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

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

19 15. Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “ATTORNEY
21 EYES ONLY.”

22 16. Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24 **IV. SCOPE**

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or extracted
27 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
28

1 Protected Material; and (3) any testimony, conversations, or presentations by Parties
2 or their Counsel that might reveal Protected Material.

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

5 **V. DURATION**

6 Once a case proceeds to trial, all of the court-filed information to be introduced
7 that was previously designated as confidential or maintained pursuant to this
8 protective order becomes public and will be presumptively available to all members of
9 the public, including the press, unless compelling reasons supported by specific factual
10 findings to proceed otherwise are made to the trial judge in advance of the trial. See
11 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006)
12 (distinguishing “good cause” showing for sealing documents produced in discovery
13 from “compelling reasons” standard when merits-related documents are part of court
14 record). Accordingly, the terms of this protective order do not extend beyond the
15 commencement of the trial.

16 **VI. DESIGNATING PROTECTED MATERIAL**

17 **A. Exercise of Restraint and Care in Designating Material for**
18 **Protection.**

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

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

1 unnecessary expenses and burdens on other parties) may expose the Designating Party
2 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 **B. Manner and Timing of Designations.**

7 Except as otherwise provided in this Order (see, e.g., second paragraph of
8 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
9 Material that qualifies for protection under this Order must be clearly so designated
10 before the material is disclosed or 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," "HIGHLY CONFIDENTIAL," or "ATTORNEY EYES
16 ONLY" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected
17 material. If only a portion or portions of the material on a page qualifies for protection,
18 the Producing Party may identify the protected portion(s) (e.g., by making appropriate
19 markings in the margins).

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

1 portion or portions of the material on a page qualifies for protection, the Producing
2 Party may clearly identify the protected portion(s) (e.g., by making appropriate
3 markings in the margins).

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

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

12 **C. Inadvertent Failures to Designate.**

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

18 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 **A. Timing of Challenges.**

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

22 **B. Meet and Confer.**

23 The Challenging Party shall initiate the dispute resolution process under Local
24 Rule 37.1, et seq. Any discovery motion must strictly comply with the procedures set
25 forth in Local Rules 37-1, 37-2, and 37-3.

26 **C. Burden.**

27 The burden of persuasion in any such challenge proceeding shall be on the
28 Designating Party. Frivolous challenges, and those made for an improper purpose

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

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

7 **A. Basic Principles.**

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

18 Unless otherwise ordered by the Court or permitted in writing by the
19 Designating Party, a 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, as well
22 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
23 disclose the information for this Action;

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

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
27 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 Professional
- 4 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 (g) the author or recipient of a document containing the information or a
- 7 custodian or other person who otherwise possessed or knew the information;
- 8 (h) during their depositions, witnesses, and attorneys for witnesses, in the
- 9 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
- 10 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
- 11 not be permitted to keep any confidential information unless they sign the
- 12 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
- 13 by the Designating Party or ordered by the Court. Pages of transcribed deposition
- 14 testimony or exhibits to depositions that reveal Protected Material may be separately
- 15 bound by the court reporter and may not be disclosed to anyone except as permitted
- 16 under this Stipulated Protective Order; and
- 17 (i) any mediator or settlement officer, and their supporting personnel,
- 18 mutually agreed upon by any of the parties engaged in settlement discussions.

19 **C. Disclosure of “HIGHLY CONFIDENTIAL” or “ATTORNEY**
20 **EYES ONLY” Information or Items.**

21 Unless otherwise ordered by the Court or permitted in writing by the
22 Designating Party, a Receiving Party may disclose any information or item designated
23 “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY” only to:

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

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

4 (c) the Court and its personnel;

5 (d) court reporters and their staff;

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

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

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

13 Notwithstanding the foregoing restrictions on the disclosure of information
14 designated as “Highly Confidential” or “Attorney’s Eyes Only,” counsel for Plaintiff
15 may disclose to representatives of Plaintiff the following information: (1) the number
16 of units purchased and sold (at wholesale and/or retail level); (2) claimed gross
17 revenue; (3) the per unit cost of goods (at wholesale and/or retail level); (4) claimed
18 gross profit or loss; and (5) claimed deductions beyond cost of goods attributable to the
19 sale of the challenged goods (at wholesale and/or retail level).

20 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
21 **PRODUCED IN OTHER LITIGATION**

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

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

28

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

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 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 action
9 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “ATTORNEY EYES
10 ONLY” before a determination by the court from which the subpoena or order issued,
11 unless the Party has obtained the Designating Party’s permission. The Designating
12 Party shall bear the burden and expense of seeking protection in that court of its
13 confidential material and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
15 directive from another court.

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

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

24 (b) In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is
26 subject to an agreement with the Non-Party not to produce the Non-Party’s
27 confidential information, then the Party shall:
28

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

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

7 (iii) make the information requested available for inspection by the
8 Non-Party, if requested.

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

17 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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1 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

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

13 **XIII. MISCELLANEOUS**

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

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

21 4. Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
23 only be filed under seal pursuant to a court order authorizing the sealing of the specific
24 Protected Material at issue; good cause must be shown in the request to file under seal.
25 If a Party's request to file Protected Material under seal is denied by the Court, then
26 the Receiving Party may file the information in the public record unless otherwise
27 instructed by the Court.
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1 **XIV. FINAL DISPOSITION**

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

19 Any violation of this Order may be punished by any and all appropriate
20 measures including, without limitation, contempt proceedings and/or monetary
21 sanctions.

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

24 DATED: July 24, 2017

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26 /S/ Suzanne H. Segal
27 Hon. Suzanne H. Segal
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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
[date] in the case of *Fabric Selection, Inc. v. Ms. Bubbles, Inc., et al.* Case No. Case
No. 2:17-cv-02622-MWF-SS. 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 the purpose of 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: _____