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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

WINE EDUCATION COUNCIL, INC.,
a Delaware corporation,

Plaintiff,

vs.

SAN PASQUAL FIDUCIARY TRUST
COMPANY, a California corporation;
PETER HILF, an individual; and JANE
RODGERS, an individual,

Defendants.

CASE NO. 2:17-cv-05879 DMG
(JCx)

**STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, privileged or private information or information protected by the work product doctrine for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery. The parties further acknowledge that the protection it

1 affords from public disclosure and use extends only to the limited information or
2 items that are entitled to confidential, privileged or work product treatment under
3 the applicable legal principles. Further, the parties acknowledge, as set forth in
4 Section 12.3, below, this Protective Order does not entitle the parties to file
5 confidential information under seal. Rather, when the parties seek permission from
6 the court to file material under seal, the parties must comply with Civil Local Rule
7 79-5 and with any pertinent orders of the assigned District Judge and Magistrate
8 Judge.

9 **B. GOOD CAUSE STATEMENT**

10 In light of the nature of the claims and allegations in this case and the parties'
11 representations that discovery in this case will involve the production of
12 confidential, privileged and work-product doctrine protected records, and in order to
13 expedite the flow of information, to facilitate the prompt resolution of disputes over
14 confidentiality and privilege of discovery materials, to adequately protect
15 information the parties are entitled to keep confidential and privileged, to ensure that
16 the parties are permitted reasonable necessary uses of such material in connection
17 with this action, to address their handling of such material at the end of the
18 litigation, and to serve the ends of justice, a protective order for such information is
19 justified in this matter. The parties shall not designate any information/documents
20 as confidential or privileged/work product without a good faith belief, in the case of
21 confidential information/documents, that such information/documents have been
22 maintained in a confidential, non-public manner, and that there is good cause or a
23 compelling reason why it should not be part of the public record of this case or, in
24 the case of privileged/work product information/documents, that such
25 information/documents are subject to protection under the attorney-client privilege
26 and/or the work product doctrine.

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2. DEFINITIONS

2.1 Action: The instant action: Case Number 2:17-cv-05879 DMG (JCx).

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

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

2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “CONFIDENTIAL” Information or Items, the disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

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

2.6 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” or “PRIVILEGED/WORK PRODUCT.”

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

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

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1 2.9 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 2.10 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.11 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent or advise a party to this Action and
8 have appeared in this Action on behalf of that party or are affiliated with a law firm
9 which has appeared on behalf of that party, and includes support staff.

10 2.12 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 2.13 “PRIVILEGED/WORK PRODUCT” Information or Items:
14 information (regardless of how it is generated, stored or maintained) or tangible
15 things that qualify for protection under the attorney-client privilege and/or work
16 product doctrine, and as specified above in the Good Cause Statement. All
17 “PRIVILEGED/WORK PRODUCT” Information or Items shall be treated as
18 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” Information or
19 Items for purposes of disclosure of that “PRIVILEGED/WORK PRODUCT”
20 Information or Items.

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.14 Professional Vendors: persons or entities that provide litigation
24 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

23 Designation in conformity with this Order requires:

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

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

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

19 (c) for information produced in some form other than documentary and
20 for any other tangible items, that the Producing Party affix in a prominent place on
21 the exterior of the container or containers in which the information is stored the
22 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
23 ONLY” or “PRIVILEGED/WORK PRODUCT.” If only a portion or portions of
24 the 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
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1 the Designating Party's right to secure protection under this Order for such material.
2 Upon timely correction of a designation, the Receiving Party must make reasonable
3 efforts to assure that the material is treated in accordance with the provisions of this
4 Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality or privilege at any time that is consistent with the
8 Court's 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 on
12 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.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

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

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

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

16 (d) the court and its personnel;

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

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

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

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

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

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
10 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
11 writing by the Designating Party, a Receiving Party may disclose any information or
12 item designated “CONFIDENTIAL” only to:

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

16 (b) 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 (c) the court and its personnel;

20 (d) private court reporters and their staff to whom disclosure is reasonably
21 necessary for this Action and who have signed the “Acknowledgment and
22 Agreement to Be Bound” (Exhibit A);

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

26 (f) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information; and
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1 (g) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement discussions.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
4 PRODUCED IN OTHER LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation
6 that compels disclosure of any information or items designated in this Action as
7 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
8 ONLY” or “PRIVILEGED/WORK PRODUCT” that Party must:

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

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

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

17 If the Designating Party timely seeks a protective order, the Party served with
18 the subpoena or court order shall not produce any information designated in this
19 action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL -- ATTORNEYS’
20 EYES ONLY” or “PRIVILEGED/WORK PRODUCT” before a determination by
21 the court from which the subpoena or order issued, unless the Party has obtained the
22 Designating Party’s permission, or unless otherwise required by the law or court
23 order. The Designating Party shall bear the burden and expense of seeking
24 protection in that court of its confidential or privileged material and nothing in these
25 provisions should be construed as authorizing or encouraging a Receiving Party in
26 this Action to disobey a lawful directive from another court.

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

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL,” “HIGHLY
5 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” or “PRIVILEGED/WORK
6 PRODUCT.” Such information produced by Non-Parties in connection with this
7 litigation is protected by the remedies and relief provided by this Order. Nothing in
8 these provisions should be construed as prohibiting a Non-Party from seeking
9 additional protections.

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

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

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

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

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

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18 11. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
19 MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
24 procedure may be established in an e-discovery order that provides for production
25 without prior privilege review.

26 Pursuant to Federal Rule of Evidence 502(d) and (e), no production or
27 disclosure of any information or items designated in this Action as
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1 “PRIVILEGED/WORK PRODUCT” shall constitute a waiver of any privilege or
2 protection with respect to that information or those items; any communications or
3 documents relating to the subject matter of that information or those items; or any
4 other communications or documents relating to the parties who sent or received or
5 are named in that information or those items. Accordingly, as is set forth explicitly
6 in Federal Rule of Evidence 502(d) and (e), the production and disclosure of any
7 information or items designated in this Action as “PRIVILEGED/WORK
8 PRODUCT” shall not constitute a waiver of any privilege or protection in this
9 Action or any other federal or state proceeding and the non-waiver provided for in
10 this Stipulated Protective Order shall be binding forever on each and every Party
11 and Non-Party who has existed, exists or will exist at any time. Without limiting the
12 foregoing, the existence of this Stipulated Protective Order shall not in any way
13 impair or affect the legal right of the Designating Party of information or items
14 designated in this Action as “PRIVILEGED/WORK PRODUCT” to assert privilege
15 claims for the information or items produced in any other actions, shall not effect a
16 waiver, and shall not be used to argue that any waiver of any privilege or protection
17 has occurred by virtue of any disclosure or production of this information and these
18 items in this Action or any other litigation or proceeding.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. No Party waives any right it
23 otherwise would have to object to disclosing or producing any information or item
24 on any ground. Similarly, no Party waives any right to object on any ground to use
25 in evidence of any of the material covered by this Stipulated Protective Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
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1 orders of the assigned District Judge and Magistrate Judge. Protected Material may
2 only be filed under seal pursuant to a court order authorizing the sealing of the
3 specific Protected Material at issue. If a Party's request to file Protected Material
4 under seal is denied by the court, then the Receiving Party may file the information
5 in the public record unless otherwise instructed by the court.

6 13. FINAL DISPOSITION

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

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on May 2, 2018 in the case of WINE EDUCATION COUNCIL, INC. vs. SAN
8 PASQUAL FIDUCIARY TRUST COMPANY, et al., United States District Court
9 for the Central District of California Case Number 2:17-cv-05879 DMG (JCx). I
10 agree to comply with and to be bound by all the terms of this Stipulated Protective
11 Order and I understand and acknowledge that failure to so comply could expose me
12 to sanctions and punishment in the nature of contempt. I solemnly promise that I
13 will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with
15 the provisions of this Order.

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

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____