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NOTE: CHANGES MADE BY THE COURT

5 Attorneys for Defendant  
 6 JACKSON NURSE PROFESSIONALS, LLC

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10 E. HOWARD MUSGROVE, an  
 11 individual on behalf of himself and  
 others similarly situated,

12 Plaintiff,

13 v.

14 JACKSON NURSE  
 15 PROFESSIONALS, LLC; a Georgia  
 limited liability company; and DOES 1  
 16 to 10 inclusive,

17 Defendant.

Case No. 2:17-cv-06565-FMO-JPR

**ORDER RE. STIPULATION AND  
 PROTECTIVE ORDER**

District Judge:

Hon. Fernando M. Olguin, Ctrm. 6D

Magistrate Judge:

Jean P. Rosenbluth, Ctrm. 690

19  
 20 1. PURPOSES AND LIMITATIONS

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

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

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

1    2.    DEFINITIONS

2           2.1    Party: any party to this action, including all of its officers, directors,  
3 employees, consultants, retained experts, and Outside Counsel of Record and their  
4 support staff.

5           2.2    Non-Party: any natural person, partnership, corporation, association, or  
6 other legal entity not named as a Party to this action.

7           2.3    Outside Counsel of Record: attorneys who are not employees of a party  
8 to this action but are retained to represent or advise a party to this action and have  
9 appeared in this action on behalf of that party or are affiliated with a law firm which  
10 has appeared on behalf of a party.

11          2.4    In-House Counsel: attorneys who are employees of a party to this action.  
12 In-House Counsel does not include Outside Counsel of Record or any other kind of  
13 counsel.

14          2.5    Counsel (without qualifier): Outside Counsel of Record and In-House  
15 Counsel (as well as their support staff).

16          2.6    Disclosure or Discovery Material: all items or information, regardless of  
17 the medium or manner in which they are generated, stored, or maintained (including,  
18 among other things, testimony, transcripts, and tangible things), that are produced or  
19 generated in disclosures or responses to discovery in this matter.

20          2.7    “CONFIDENTIAL” Information or Items: information (regardless of  
21 how it is generated, stored, or maintained) or tangible things that qualify for protection  
22 under Federal Rule of Civil Procedure 26(c), including confidential, proprietary,  
23 commercial information pertaining to the operation of Defendant’s business.

24          2.8    Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL.”

26          2.9    Producing Party: a Party or Non-Party that produces Disclosures or  
27 Discovery Material in this action.

28

1           2.10 Receiving Party: a Party that receives Disclosure of Discovery Material  
2 from a Producing Party.

3           2.11 Designating Party: a Party or Non-Party that designates information or  
4 items that it produces in response to discovery as “CONFIDENTIAL.”

5           2.12 Challenging Party: a Party or Non-Party that challenges the designation  
6 of information or items as “CONFIDENTIAL” under this Order.

7           2.13 Expert: a person with specialized knowledge or experience in a manner  
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
9 expert witness or as a consultant in this action.

10          2.14 Professional Vendors: persons or entities that provide litigation support  
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
13 and their employees and subcontractors.

14 3.     SCOPE

15           The protections conferred by this Stipulation and Protective Order cover not  
16 only Protected Material (as defined above), but also (1) any information copied or  
17 extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations  
18 of Protected Material; and (3) any testimony, conversations, or presentations by  
19 Parties or their Counsel that might reveal Protected Material. However, the protections  
20 conferred by this Stipulation and Order do not cover the following information: (a)  
21 any information that is in the public domain at the time of disclosure to a Receiving  
22 Party or that becomes part of the public domain after its disclosure to a Receiving  
23 Party as a result of publication not involving a violation of this Order, including  
24 becoming part of the public record through trial or otherwise; and (b) any information  
25 known to the Receiving Party prior to the disclosure or obtained by the Receiving  
26 Party after the disclosure from a source who obtained the information lawfully and  
27 under no obligation to confidentiality to the Designating Party. Any use of Protected  
28 Material at trial shall be governed by a separate agreement or order.

1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

19 Mass, indiscriminate, or routinized designations are prohibited. Designations  
20 that are shown to be clearly unjustified or that have been made for an improper  
21 purpose (e.g., to unnecessarily encumber or retard the case development process or to  
22 impose unnecessary expenses and burdens on other parties) expose the Designating  
23 Party to sanctions.

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in  
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
2 under this Order must be clearly so designated before the material is disclosed or  
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic  
6 documents, but excluding transcripts of depositions or other pretrial proceedings), that  
7 the Producing Party affix the legend “CONFIDENTIAL” to each page that contains  
8 protected material.

9 A Party or Non-Party that makes original documents or materials available for  
10 inspection need not designate them for protection until after the inspecting Party has  
11 indicated which material it would like copied and produced. During the inspection and  
12 before the designation, all materials made available for inspection shall be deemed  
13 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
14 copied and produced, the Producing Party must determine which documents, or  
15 portions thereof, qualify for protection under this Order. Then, before producing the  
16 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend  
17 to each page that contains Protected Material.

18 (b) for testimony given in deposition or in other discovery-related  
19 proceedings, that the Designating Party identify on the Record, before the close of the  
20 deposition, hearing, or other proceeding, all protected testimony.

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

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
28 failure to designate qualified information or items does not, standing alone, waive the

1 Designating Party’s right to secure protection under this Order for such material.

2 Upon timely correction of the 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 at any time consistent with the Court’s scheduling order.  
8 Unless a prompt challenge to a Designating Party’s confidentiality designation is  
9 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
10 or a significant disruption or delay of the litigation, a Party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly  
12 after the original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
14 resolution process by providing written notice of each designation it is challenging  
15 and describing the basis for each challenge. To avoid ambiguity as to whether a  
16 challenge has been made, the written notice must recite that the challenge to  
17 confidentiality is being made in accordance with this specific paragraph of the  
18 Protective Order as well as Local Rule 37. The parties shall attempt to resolve each  
19 challenge in good faith and must begin the process by conferring directly (either  
20 telephonically or in person) within 10 days of the date of service of notice. In  
21 conferring, the Challenging Party must explain the basis for its belief that the  
22 confidentiality designation was not proper and must give the Designating Party an  
23 opportunity to review the designated material, to reconsider the circumstances, and if  
24 no change in designation is offered, to explain the basis for the chosen designation. A  
25 Challenging Party may proceed to the next stage of the challenge process only if it has  
26 engaged in this meet and confer process first or establishes that the Designating Party  
27 is unwilling to participate in the meet and confer process in a timely manner.

1           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
2 court intervention, the Designating Party shall file and serve a motion to retain  
3 confidentiality under Civil Local Rule 37 (and in compliance with Civil Local Rule  
4 79-5 if applicable) within 21 days of the initial notice of challenge or within 14 days  
5 of the parties agreeing that the meet and confer process will not resolve their dispute,  
6 whichever is earlier. Each such motion must be accompanied by a competent  
7 declaration affirming that the movant has complied with the meet and confer  
8 requirements imposed in the preceding paragraph and Rule 37. Failure by the  
9 Designating Party to make such a motion including the required declaration within 21  
10 days (or 14 days, if applicable) shall automatically waive the confidentiality  
11 designation for each challenged designation. In addition, the Challenging Party may  
12 file a motion challenging a confidentiality designation at any time consistent with the  
13 Court’s scheduling order if there is good cause for doing so, including a challenge to  
14 the designation of a deposition transcript or any portions thereof. Any motion brought  
15 pursuant to this provision must be accompanied by a competent declaration affirming  
16 that the movant has complied with the meet and confer requirements imposed by the  
17 preceding paragraph and Rule 37.

18           The burden of persuasion in any such challenge proceeding shall be on the  
19 Designating Party. Frivolous challenges, and those made for improper purpose (e.g.,  
20 to harass or impose unnecessary expenses and burdens on other parties) may expose  
21 the Challenging Party to sanctions. Unless the Designating Party has waived the  
22 confidentiality designation by failing to file a motion to retain confidentiality as  
23 described above, all parties shall continue to afford the materials in question the level  
24 of protection to which it is entitled under the Producing Party’s designation until the  
25 court rules on the challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a Non-Party in connection with this case  
4 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
5 Material may be disclosed only to the categories of persons and under the conditions  
6 described in this Order. When the litigation has been terminated, a Receiving Party  
7 must comply with the provisions of section 13 below.

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

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
12 otherwise ordered by the court or permitted in writing by the Designating Party, a  
13 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
14 only to:

15 (a) the Receiving Party’s Outside Counsel of Record to this action, as  
16 well as employees of said Outside Counsel of Record to whom it is reasonably  
17 necessary to disclose the information for this litigation and who have signed the  
18 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

19 (b) the officers, directors, and employees (including In-House Counsel)  
20 of the Receiving Party to whom disclosure is reasonably necessary for this litigation  
21 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
22 A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom  
24 disclosure is reasonably necessary for this litigation and who have signed the  
25 “Acknowledgement and Agreement to Be Bound” (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants,  
28 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary

1 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
2 Bound” (Exhibit A);

3 (f) during their depositions, witnesses in this action to whom disclosure is  
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
5 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
6 by the court. Pages of transcribed deposition testimony or exhibits to depositions that  
7 reveal Protected Material must be separately bound by the court reporter and may not  
8 be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

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

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

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with  
25 the subpoena or court order shall not produce any information designated in this  
26 action as “CONFIDENTIAL” before a determination by the court from which the  
27 subpoena or order issued, unless the Party has obtained the Designating Party’s  
28 express, written permission. The Designating Party shall bear the burden and expense

1 of seeking protection in that court of its confidential material – and nothing in these  
2 provisions should be construed as authorizing or encouraging a Receiving Party in this  
3 action to disobey a lawful directive from another court.

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

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

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

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

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

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

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

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

4 10 UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
14 PROTECTED MATERIAL

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

25 12. MISCELLANEOUS

26 \_\_\_\_\_  
27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1           12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
2 person to seek its modification by the court in the future.

3           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
4 Protective Order, no Party waives any right it otherwise would have to object to  
5 disclosing or producing any information or item on any ground not addressed in this  
6 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
7 ground the use in evidence of any of the material covered by this Protective Order.

8           12.3 Filing Protected Material. If a Receiving Party wishes to file Protected  
9 Material with the Court, the Receiving Party must give any Designating Party five  
10 calendar days' notice of intent to file. If the Designating Party objects, the  
11 Designating Party shall notify the Receiving Party and file an application to file  
12 documents under seal within two (2) court days. An application to file documents  
13 under seal must meet the requirements of Local Rule 79-5. If the Court grants an  
14 application to file documents under seal, the Court's mandatory chambers copies must  
15 include a complete version of the documents with an appropriate notation identifying  
16 the document or the portion of the document that has been filed under seal. If a  
17 Designating Party fails to timely file an application to file the Protected Material  
18 under seal or the request to file Protected Material under seal is denied by the court,  
19 then the Receiving Party may file the information in the public record unless  
20 otherwise instructed by the court.

21 13. FINAL DISPOSITION

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

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

11 IT IS SO ORDERED.

12 DATED: January 11, 2018



13 \_\_\_\_\_  
14 Magistrate Judge Jean P. Rosenbluth

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26 EXHIBIT A

27 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
2 \_\_\_\_\_ [print or type full address], declare under penalty of  
3 perjury that I have read in its entirety and understand the Stipulated Protective  
4 Order that was issued by the United States Court for the Central District of  
5 California on [date] in the case of *Musgrove v. Jackson Nurse Professionals,*  
6 *LLC*, Case No. 2:17-cv-06565-FMO-JPR. I agree to comply with and to be  
7 bound by all the terms of this Stipulated Protective Order and I understand and  
8 acknowledge that failure to so comply could expose me to sanctions and  
9 punishment in the nature of contempt. I solemnly promise that I will not  
10 disclose in any manner any information or item that is subject to this Stipulated  
11 Protective Order to any person or entity except in strict compliance with the  
12 provision of this Order.

13 I further agree to submit to the jurisdiction of the United States District  
14 Court for the Central District of California for the purpose of enforcing the  
15 terms of this Stipulated Protective Order, even if such enforcement proceedings  
16 occur after termination of this action.

17 I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_  
18 \_\_\_\_\_ [print or type full address and telephone  
19 number] as my California agent for service of process in connection with this  
20 action or any proceedings related to enforcement of this Stipulated Protective  
21 Order.

22 Date: \_\_\_\_\_  
23 City and State where sworn and signed: \_\_\_\_\_  
24 Printed name: \_\_\_\_\_  
25 Signature: \_\_\_\_\_

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