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

Jose Pelayo, Jesus Pelayo, Victor Pelayo

Plaintiff,

v.

CITY OF POMONA, POMONA POLICE DEPARTMENT CHIEF PAUL CAPRARO, individually and in his official capacity, AUSTIN DOSSEY #42108, individually and as a peace officer, FRANK SACCA #41873, individually and as a peace officer, TIM DORN #41974, individually and as a peace officer, PRINCE HUTCHINSON #42642, individually and as a peace officer, and DOES 1-10.

Defendant.

Case No. 2:17- CV-07292-PSG-SK

STIPULATED PROTECTIVE ORDER

TO THE HONORABLE COURT:

Pursuant to Federal Rules of Civil Procedure, Rule 26(c), Non-party County of San Bernardino ("County") and Plaintiffs JOSE PELAYO, JESUS PELAYO, and VICTOR PELAYO ("Plaintiffs"), by and through their attorneys of record, hereby stipulate to the Protective Order set forth herein regarding the production of documents, records, and tangible things during the discovery phase of this action.

1 As it relates to this specific protective order, the County of San Bernardino and
2 Plaintiffs are sometimes hereinafter referred to individually as a “Party” and
3 collectively as the “Parties.”
4

5 **1. A. PURPOSES AND LIMITATIONS**

6 Discovery in this action is likely to involve production of confidential,
7 proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may
9 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
10 enter the following Stipulated Protective Order. This Order is intended to protect all
11 documents produced by non-party County of San Bernardino as part of a
12 supplemental response to Plaintiffs’ subpoena duces tecum, which include items
13 listed on the County’s Privilege Log, as well as any documents which are ordered to
14 be produced by the Court resulting from any discovery disputes that arise in this
15 matter. The parties acknowledge that this Order does not confer blanket protections
16 on all disclosures or responses to discovery and that the protection it affords from
17 public disclosure and use extends only to the limited information or items that are
18 entitled to confidential treatment under the applicable legal principles. The parties
19 further acknowledge, as set forth in Section 12.3, below, that this Stipulated
20 Protective Order does not entitle them to file confidential information under seal;
21 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
22 standards that will be applied when a party seeks permission from the court to file
23 material under seal.

24 **B. GOOD CAUSE STATEMENT**

25 Though Plaintiffs may be entitled, in certain limited circumstances, to
26 examine information in police officers’ personnel files, internal affairs files and
27 force reports, to the extent that they are relevant to their claims in the above-
28 captioned action, the County contends that a protective order is necessary to prevent

1 random distribution of such information and fulfill its obligations under state and
2 federal law. Furthermore, this proposed protective order was created for the purpose
3 of protecting certain information that may be subject to the official information
4 privilege, law enforcement privilege and the right to privacy, as protected by the
5 California and United States Constitution, balanced with plaintiffs' right to
6 discovery in this litigation.

7 Police personnel records are deemed confidential under federal law. Sanchez
8 v. Santa Ana Police Dep't, 936 F.2d 1027, 1033-34 (9th Cir. 1990). Law
9 enforcement personnel records also involve confidential information that is
10 protected by the Public Safety Officers Procedural Bill of Rights Act, as codified at
11 section 3300, *et seq.*, of the California Government Code. The public disclosure of
12 law enforcement personnel records and records which include witness name, etc., is
13 further limited by a number of California statutes, including but not limited to
14 California Government Code section 6254, California Penal Code section 832.7, *et*
15 *seq.*, and California Evidence Code section 1040 *et seq.*

16 The County contends that it has an interest and statutory obligation in
17 protecting privacy rights relating to information in personnel files and other related
18 information.

19 It is the policy of the County not to disclose information contained in
20 background investigations about its employees, or other information contained in
21 confidential police personnel files unless ordered to do so by a court of competent
22 jurisdiction. Further, it is the policy of the County not to disclose information
23 contained in police reports to those other than the parties involved in the incident,
24 their representatives, prosecutors, etc. unless ordered to do so by a court of
25 competent jurisdiction.

26 Within the County, access to personnel files is restricted to those on a "need
27 to know" basis. Controlled access to the files is regarded by the County as essential
28 in order to assure the integrity and security of such files. The County contends that

1 uncontrolled disclosure of such information can disrupt the County's vital, day-to-
2 day operations, erode the integrity and security of the confidential personnel and
3 related files, affect the morale of County's personnel, and frustrate the legitimate
4 purposes of gathering the information in these files, including adversely impacting
5 disciplinary procedures within the County.

6 Accordingly, to expedite the flow of information, to facilitate the prompt
7 resolution of disputes over confidentiality of discovery materials, to adequately
8 protect information the parties are entitled to keep confidential, to ensure that the
9 parties are permitted reasonable necessary uses of such material in preparation for
10 and in the conduct of trial, to address their handling at the end of the litigation, and
11 serve the ends of justice, a protective order for such information is justified in this
12 matter. It is the intent of the parties that information will not be designated as
13 confidential for tactical reasons and that nothing be so designated without a good
14 faith belief that it has been maintained in a confidential, non-public manner, and
15 there is good cause why it should not be part of the public record of this case.

16

17 2. DEFINITIONS

18 2.1 Action: Jose Pelayo et al. v. City of Pomona et al. (U.S.D.C. Case No.
19 2:17-cv-07292-PSG-SK).

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

22 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how
23 it is generated, stored or maintained) or tangible things that qualify for protection
24 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
25 Cause Statement, including documents produced by County as part of a
26 supplemental response to Plaintiffs' subpoena duces tecum, which include items
27 listed on the County's Privilege Log, as well as any documents which are ordered to
28

1 be produced by the Court resulting from any discovery disputes that arise in this
2 matter.

3 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
4 support staff).

5 2.5 Designating Party: a Party or Non-Party that designates information or
6 items that it produces in disclosures or in responses to discovery as
7 “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of
9 the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced or
11 generated in disclosures or responses to discovery in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this Action.

15 2.8 House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.10 Outside Counsel of Record: attorneys who are not employees of a party
21 to this Action but are retained to represent or advise a party to this Action and have
22 appeared in this Action on behalf of that party, and includes support staff.

23 2.11 Party: any party to this Action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

28

1 2.13 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL.”

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9
10 **3. SCOPE**

11 The protections conferred by this Stipulation and Order cover not only
12 Protected Material (as defined above), but also (1) any information copied or
13 extracted from Protected Material; (2) all copies, excerpts, summaries, or
14 compilations of Protected Material; and (3) any testimony, conversations, or
15 presentations by Parties or their Counsel that might reveal Protected Material.

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

18
19 **4. DURATION**

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

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5. DESIGNATING PROTECTED MATERIAL

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

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. Here, the designated material includes documents produced by non-party County of San Bernardino as part of a supplemental response to Plaintiffs' subpoena duces tecum, which include items listed on the County's Privilege Log, as well as any documents which are ordered to be produced by the Court resulting from any discovery disputes that arise in this matter.

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

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

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that
6 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
7 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing
9 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

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

23 (b) for testimony given in depositions that the Designating Party identify
24 the Disclosure or Discovery Material on the record, before the close of the
25 deposition all protected testimony.

26 (c) for information produced in some form other than documentary and for
27 any other tangible items, that the Producing Party affix in a prominent place on the
28 exterior of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such material.
7 Upon timely correction of a designation, the Receiving Party must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of this
9 Order.

10

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37.1 et seq.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose
19 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
20 expose the Challenging Party to sanctions. Unless the Designating Party has waived
21 or withdrawn the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the
23 Producing Party’s designation until the Court rules on the challenge.

24

25 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a
3 Receiving Party must comply with the provisions of section 13 below (FINAL
4 DISPOSITION).

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

8 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the Designating Party, a Receiving
10 Party may disclose any information or item designated "CONFIDENTIAL" only to:

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

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

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

20 (e) court reporters and their staff;

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

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

26 (h) during their depositions, witnesses, and attorneys for witnesses, in the
27 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
28 requests that the witness sign the form attached as Exhibit A hereto; and (2) they

1 will not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
3 agreed by the Designating Party or ordered by the court. Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal Protected Material shall
5 be separately bound by the court reporter and shall not be disclosed to anyone
6 except as permitted under this Stipulated 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

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

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

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with
24 the subpoena or court order shall not produce any information designated in this
25 action as “CONFIDENTIAL” before a determination by the court from which the
26 subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this Action
2 to disobey a lawful directive from another court.

3
4 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
5 **PRODUCED 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 Action, 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, if requested.

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

1 Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3
4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
5 **MATERIAL**

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

14
15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
16 **OTHERWISE PROTECTED MATERIAL**

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

1 **12. MISCELLANEOUS**

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

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

9 12.3 Filing Protected Material. All Parties and their Counsel agree that if a
10 Party intends to file Protected Material with the Court, for any reason, that party and
11 Counsel shall request permission from the Court to file the Protected Material under
12 seal. A Party that seeks to file under seal any Protected Material must comply with
13 Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
14 court order authorizing the sealing of the specific Protected Material at issue. If a
15 Party's request to file Protected Material under seal is denied by the court, then the
16 Receiving Party may file the information in the public record unless otherwise
17 instructed by the court.

18
19 **13. FINAL DISPOSITION**

20 After the final disposition of this Action, as defined in paragraph 4, within 60
21 days of a written request by the Designating Party, each Receiving Party (which also
22 includes those defined as a Party in Section 2.11) must return all Protected Material
23 to the Producing Party or destroy such material. As used in this subdivision, "all
24 Protected Material" includes all copies, abstracts, compilations, summaries, and any
25 other format reproducing or capturing any of the Protected Material. Whether the
26 Protected Material is returned or destroyed, the Receiving Party must submit a
27 written certification to the Producing Party (and, if not the same person or entity, to
28 the Designating Party) by the 60 day deadline that (1) identifies (by category, where

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

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

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: June 11, 2018

MKRTCHYAN LAW

16
17 By: 

NARINE MKRTCHYAN

Attorneys for Plaintiffs JOSE PELAYO,
JESUS PELAYO and VICTOR PELAYO

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19
20
21 DATED: June 11, 2018

MICHELLE D. BLAKEMORE,
County Counsel

22
23 By: 

RICHARD D. LUCZAK

Deputy County Counsel

Attorneys for Non-Party COUNTY OF SAN
BERNARDINO, and its included San
Bernardino County Sheriff's Department

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Order

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Date: June 13, 2018



Honorable Steve Kim
United States Magistrate Judge

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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 Jose Pelayo, et al. v. City of Pomona, et al., Case No. 2:17-
cv-07292-PSG-SK. 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: _____