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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 CITY OF FOUNTAIN VALLEY (“City”) 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. As

Stipulated Protective Order

1 it relates to this specific protective order, the City and Plaintiffs are sometimes
2 hereinafter referred to individually as a "Party" and collectively as the "Parties.

3 **1. A. PURPOSES AND LIMITATIONS**

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

21 **B. GOOD CAUSE STATEMENT**

22 Though Plaintiffs may be entitled, in certain limited circumstances, to examine
23 information in police officers' personnel files, internal affairs files and force reports,
24 to the extent that they are relevant to their claims in the above-captioned action, the
25 City contends that a protective order is necessary to prevent random distribution of
26 such information and fulfill its obligations under state and federal law. Furthermore,
27 this proposed protective order was created for the purpose of protecting certain
28 information that may be subject to the official information privilege, law enforcement

1 privilege and the right to privacy, as protected by the California and United States
2 Constitution, balanced with plaintiffs' right to discovery in this litigation.

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

12 The City contends that it has an interest and statutory obligation in protecting
13 privacy rights relating to information in personnel files and other related information.

14 It is the policy of the City not to disclose information contained in background
15 investigations about its employees, or other information contained in confidential
16 police personnel files unless ordered to do so by a court of competent jurisdiction.
17 Further, it is the policy of the City not to disclose information contained in police
18 reports to those other than the parties involved in the incident, their representatives,
19 prosecutors, etc. unless ordered to do so by a court of competent jurisdiction.

20 Within the City, access to personnel files is restricted to those on a "need to
21 know" basis. Controlled access to the files is regarded by the City as essential in order
22 to assure the integrity and security of such files. The City contends that uncontrolled
23 disclosure of such information can disrupt the City's vital, day-to-day operations,
24 erode the integrity and security of the confidential personnel and related files, affect
25 the morale of City's personnel, and frustrate the legitimate purposes of gathering the
26 information in these files, including adversely impacting disciplinary procedures
27 within the City and the hiring process for police officers.

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

11 **2. DEFINITIONS**

12 2.1 Action: Jose Pelayo et al. v. City of Pomona et al. (U.S.D.C. Case No. 2:17-
13 cv-07292-PSG-SK).

14 2.2 Challenging Party: a Party that challenges the designation of information
15 or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
17 it is generated, stored or maintained) or tangible things that qualify for protection
18 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
19 Cause Statement, including documents produced by City in response to Plaintiffs’
20 subpoena duces tecum, which include items listed on the City’s Privilege Log, as well
21 as any documents which are ordered to be produced by the Court resulting from any
22 discovery disputes that arise in this matter.

23 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
24 support staff).

25 2.5 Designating Party: a Party or Non-Party that designates information or
26 items that it produces in disclosures or in responses to discovery as
27 “CONFIDENTIAL.”

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1 2.6 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this Action.

8 2.8 House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.9 Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
14 this Action but are retained to represent or advise a party to this Action and have
15 appeared in this Action on behalf of that party, and includes support staff.

16 2.11 Party: any party to this Action, including all of its officers, directors,
17 employees, consultants, retained experts, and Outside Counsel of Record (and their
18 support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

21 2.13 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)
24 and their employees and subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL.”

27 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
28 from a Producing Party.

1 **3. SCOPE**

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

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

9 **4. DURATION**

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

18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
20 Party or Non-Party that designates information or items for protection
21 under this Order must take care to limit any such designation to specific material that
22 qualifies under the appropriate standards. The Designating Party must designate for
23 protection only those parts of material, documents, items, or oral or written
24 communications that qualify so that other portions of the material, documents, items,
25 or communications for which protection is not warranted are not swept unjustifiably
26 within the ambit of this Order. Here, the designated material includes documents
27 produced by non-party City in response to Plaintiffs' subpoena duces tecum, which
28 include items listed on the City's Privilege Log, as well as any documents which are

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

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
13 or ordered, Disclosure or Discovery Material that qualifies for protection under this
14 Order must be clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
18 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
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 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and before
26 the designation, all of the material made available for inspection shall be deemed
27 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
28 copied and produced, the Producing Party must determine which documents, or

1 portions thereof, qualify for protection under this Order. Then, before producing the
2 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
3 to each page that contains Protected Material. If only a portion or portions of the
4 material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the
6 margins).

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

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

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
17 to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material.
19 Upon timely correction of a designation, the Receiving Party must make reasonable
20 efforts to assure that the material is treated in accordance with the provisions of this
21 Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
24 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
26 process under Local Rule 37.1 et seq.

27 6.3 Burden of Persuasion. The burden of persuasion in any such challenge
28 proceeding shall be on the Designating Party. Frivolous challenges, and those made

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

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

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this
9 Action only for prosecuting, defending, or attempting to settle this Action. Such
10 Protected Material may be disclosed only to the categories of persons and under the
11 conditions described in this Order. When the Action has been terminated, a Receiving
12 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
17 ordered by the court or permitted in writing by the Designating Party, a Receiving
18 Party may disclose any information or item designated "CONFIDENTIAL" only to:

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

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

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

27 (d) the court and its personnel;

28 (e) court reporters and their staff;

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

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

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

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

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
18 **PRODUCED IN OTHER LITIGATION**

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

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

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

28

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

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

11 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
12 **PRODUCED IN THIS LITIGATION**

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

18 (b) In the event that a Party is required, by a valid discovery request, to
19 produce a Non-Party's confidential information in its possession, and the Party is
20 subject to an agreement with the Non-Party not to produce the Non-Party's
21 confidential information, then the Party shall:

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

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

28 (3) make the information requested available for inspection by the

1 Non-Party, if requested.

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

10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

19 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
20 **OTHERWISE PROTECTED MATERIAL**

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

1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the court.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

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

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

20 **13. FINAL DISPOSITION**

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

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

11 **14. VIOLATION OF ORDER**

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

15
16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: June 18, 2018

MKRTCHYAN LAW

18
19 By: 

20 NARINE MKRTCHYAN
21 Attorneys for Plaintiffs JOSE PELAYO,
22 JESUS PELAYO and VICTOR PELAYO

23 DATED: June 18, 2018

HARPER & BURNS LLP

24
25 By: 

26 Alexandra Halfman
27 Attorneys for Non-Party CITY OF
28 FOUNTAIN VALLEY

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Order

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Date: June 20, 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: _____