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14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA

17 **HARTFORD UNDERWRITERS**
INSURANCE COMPANY, a
 18 foreign corporation, individually and
 as subrogee for its insured, Josephine
 19 & Ignazio Vivirito

20 Plaintiff,

21 v.

22 **TERA-POWER ENERGY**
COMPANY, a foreign entity;
 23 **GOOD TIME CO.**, a foreign entity;
HONG KONG UNI-SUN
 24 **TECHNOLOGY LIMITED**, a
 foreign entity; **AMAZON.COM,**
 25 **INC.**, a Delaware corporation; and
 26 **DOES 1 – 20**, inclusive,

Case No. 2:19-cv-07480 AB (RAOx)

STIPULATED PROTECTIVE ORDER
AND [~~PROPOSED~~] ORDER
THEREON¹

Magistrate Judge: Hon. Rozella A. Oliver

27 _____
 28 ¹ This Stipulated Protective Order is substantially based on the model
 protective order provided under Magistrate Judge Rozella A. Oliver’s Procedures.

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Defendants.

4 1. A. PURPOSES AND LIMITATIONS

5 Discovery in this action is likely to involve production of confidential,
6 proprietary or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation may
8 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
9 to enter the following Stipulated Protective Order. The parties acknowledge that
10 this Order does not confer blanket protections on all disclosures or responses to
11 discovery and that the protection it affords from public disclosure and use extends
12 only to the limited information or items that are entitled to confidential treatment
13 under the applicable legal principles.

14 B. GOOD CAUSE STATEMENT

15 This action is likely to involve confidential and proprietary materials and
16 information including, confidential or competitively sensitive business or
17 financial information, information regarding confidential business practices, or
18 other confidential research, development, or commercial information (including
19 information implicating privacy rights of third parties), information otherwise
20 generally unavailable to the public, or which may be privileged or otherwise
21 protected from disclosure under state or federal statutes, court rules, case
22 decisions, or common law. Accordingly, to expedite the flow of information, to
23 facilitate the prompt resolution of disputes over confidentiality of discovery
24 materials, to adequately protect information the parties are entitled to keep
25 confidential, to ensure that the parties are permitted reasonable necessary uses of
26 such material in preparation for and in the conduct of trial, to address their
27 handling at the end of the litigation, and serve the ends of justice, a protective
28 order for such information is justified in this matter. It is the intent of the parties

1 that information will not be designated as confidential for tactical reasons and that
2 nothing be so designated without a good faith belief that it has been maintained in
3 a confidential, non-public manner, and there is good cause why it should not be
4 part of the public record of this case.

5 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

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

11 There is a strong presumption that the public has a right of access to
12 judicial proceedings and records in civil cases. In connection with non-dispositive
13 motions, good cause must be shown to support a filing under seal. *See Kamakana*
14 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
15 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
16 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
17 protective orders require good cause showing), and a specific showing of good
18 cause or compelling reasons with proper evidentiary support and legal
19 justification, must be made with respect to Protected Material that a party seeks to
20 file under seal. The parties' mere designation of Disclosure or Discovery Material
21 as CONFIDENTIAL does not— without the submission of competent evidence
22 by declaration, establishing that the material sought to be filed under seal
23 qualifies as confidential, privileged, or otherwise protectable—constitute good
24 cause.

25 Further, if a party requests sealing related to a dispositive motion or trial,
26 then compelling reasons, not only good cause, for the sealing must be shown, and
27 the relief sought shall be narrowly tailored to serve the specific interest to be
28 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.

1 2010). For each item or type of information, document, or thing sought to be filed
2 or introduced under seal in connection with a dispositive motion or trial, the party
3 seeking protection must articulate compelling reasons, supported by specific facts
4 and legal justification, for the requested sealing order. Again, competent evidence
5 supporting the application to file documents under seal must be provided by
6 declaration.

7 Any document that is not confidential, privileged, or otherwise protectable
8 in its entirety will not be filed under seal if the confidential portions can be
9 redacted. If documents can be redacted, then a redacted version for public
10 viewing, omitting only the confidential, privileged, or otherwise protectable
11 portions of the document, shall be filed. Any application that seeks to file
12 documents under seal in their entirety should include an explanation of why
13 redaction is not feasible.

14 2. DEFINITIONS

15 2.1 Action: This pending federal lawsuit entitled Hartford Underwriters
16 Insurance Company v. Tera-Power Energy Company et al., Case No. 2:19-cv-
17 07480 AB (RAOx).

18 2.2 Challenging Party: a Party or Non-Party that challenges the
19 designation of information or items under this Order.

20 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
21 how it is generated, stored or maintained) or tangible things that qualify for
22 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
23 the Good Cause Statement.

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

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

1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of 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
4 or 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
14 party to this Action but are retained to represent or advise a party to this Action and
15 have appeared in this Action on behalf of that party or are affiliated with a law firm
16 that has appeared on behalf of that party, and includes support staff.

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

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

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

26 2.14 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL” or “FOR ATTORNEYS’ EYES ONLY.”
28

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 2.16 Attorneys' Eyes Only. The label "Attorneys' Eyes Only" shall be
4 used in the manner proscribed in subparagraph 5.4 below and means that the only
5 person(s) allowed to view information so labeled are counsel for the Receiving
6 Party which requests the information, or an expert or consultant of the Receiving
7 Party.

8 3. SCOPE

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

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

16 4. HANDLING DURING TRIAL

17 Confidential Information that is subject to this Protective Order may be marked
18 and used as trial exhibits by any party, subject to terms and conditions imposed by
19 the Court.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material
6 that qualifies for protection under this Order must be clearly so designated before
7 the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), that the Producing Party affix the following legend

12 CONFIDENTIAL: Subject to Protective Order in Case No.
13 2:19-cv-07480 AB(RAOx)

14 (hereinafter "CONFIDENTIAL legend"), to each page that contains Protected
15 Material. If only a portion of the material on a page qualifies for protection, the
16 Producing Party also must clearly identify the protected portion(s) (e.g., by making
17 appropriate markings in the margins).

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

3 (b) Within 30 days after receiving a deposition transcript, a party may
4 inform the other Parties if portions of it are designated as “CONFIDENTIAL.” All
5 persons and Parties in possession of a copy of a designated deposition transcript
6 shall appropriately mark it as containing protected testimony.

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

13 (d) If a document containing Protected Material is produced in native
14 format, the file name shall contain the term “CONFIDENTIAL” or otherwise
15 clearly indicate that it contains information subject to this Protective Order.

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

22 5.4 Highly Sensitive Information. Certain documents to be produced by
23 the Parties may be highly sensitive, proprietary, commercial, or personal
24 information. Such highly sensitive information shall be labeled, in addition to the
25 marking described in subparagraph 5.2, as “FOR ATTORNEYS’ EYES ONLY”
26 and such information will be disclosed only to counsel for the requesting party,
27 subject to subparagraph 7.2(a), or to an expert or consultant, subject to
28 subparagraph 7.2(c), and not to the Parties or any other person. A party producing

1 documents that it believes constitute highly sensitive information shall label the
2 documents with the following legend or something substantially similar:

3 CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY: Subject to
4 Protective Order in Case No. 2:19-cv-07480 AB(RAOx)

5 Documents labeled "FOR ATTORNEYS' EYES ONLY" are subject to all of
6 the provisions of this Protective Order governing the use, disclosure, and
7 destruction of Protected Material, as well as the additional restrictions contained in
8 this subparagraph 5.4.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court's
12 Scheduling Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process under Local Rule 37.1 et seq.

15 6.3 The burden of persuasion in any such challenge proceeding shall be on
16 the Designating Party. Frivolous challenges and those made for an improper purpose
17 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
18 expose the Challenging Party to sanctions. Unless the Designating Party has waived
19 or withdrawn the confidentiality designation, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing
21 Party's designation until the Court rules on the challenge.

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

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

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

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

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

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

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

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

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 form attached as Exhibit 1 hereto; and (2) they
28 will not be permitted to keep any confidential information unless they sign the

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

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

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
9 IN OTHER LITIGATION

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

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

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

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

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

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.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party’s confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this court of its Protected Material.
28

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

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

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order, no Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in
28 this Stipulated Protective Order. Similarly, no Party waives any right to object on

1 any ground to use in evidence of any of the material covered by this Protective
2 Order.

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

9 13. FINAL DISPOSITION

10 Within 90 days after the final disposition of this Action, as defined in
11 paragraph 4, each Receiving Party must return all Protected Material to the Producing
12 Party or destroy such material. As used in this subdivision, "all Protected Material"
13 includes all copies, abstracts, compilations, summaries, and any other format
14 reproducing or capturing any of the Protected Material. Whether the Protected
15 Material is returned or destroyed, the Receiving Party must submit a written
16 certification to the Producing Party (and, if not the same person or entity, to the
17 Designating Party) by the 90 day deadline that (1) identifies (by category, where
18 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
19 that the Receiving Party has not retained any copies, abstracts, compilations,
20 summaries or any other format reproducing or capturing any of the Protected
21 Material.

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14. VIOLATION

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

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

DATED: May 19, 2020 **PERKINS COIE LLP**

By: /s/ Julian Feldbein-Vinderman
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DATED: May 19, 2020 **BAUMAN LOEWE WITT & MAXWELL, PLLC**

By: /s/ Matthew E. Delinko
Matthew E. Delinko
mdelinko@blwmlawfirm.com
Christopher J. Brennan
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Attorneys for Plaintiff
Hartford Underwriters Insurance Company

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATE: May 20, 2020 Rozella A. Oliver
Honorable Rozella A. Oliver
United States Magistrate Judge

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 in the case of *Hartford Underwriters Insurance Company v. Tera-Power Energy*
8 *Company, et al.*, Case No. 2:19-cv-07480-AB (RAO). I agree to comply with and to
9 be bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

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

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

22
23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27 Signature: _____

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