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NOTE: CHANGES MADE BY THE COURT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

| |
|---|
| <p>NBCUniversal Media, LLC, a Delaware limited liability company; Universal Television LLC, a New York limited liability company; and Universal Studios Licensing LLC, a Delaware limited liability company,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Jay Kennette Media Group LLC, a Delaware limited liability company; Gooder Labs, LLC, a Delaware limited liability company; and Kenneth Talbert, an individual,</p> <p style="text-align: center;">Defendants.</p> |
|---|

Case No. 2:22-cv-04541-SB-JPR

STIPULATED PROTECTIVE ORDER

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the

1 following Stipulated Protective Order. The Parties acknowledge that this Order does
2 not confer blanket protections on all disclosures or responses to discovery and that
3 the protection it affords from public disclosure and use extends only to the limited
4 information or items that are entitled to confidential treatment under the applicable
5 legal principles. The Parties further acknowledge, as set forth in Section 12.3 below,
6 that this Order does not entitle them to file Confidential Information under seal; Civil
7 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
8 will be applied when a Party seeks permission from the Court to file material under
9 seal.

10 1.2 GOOD CAUSE STATEMENT

11 This Action is likely to involve disclosure of valuable commercial, financial,
12 strategic, technical, proprietary and/or personal identifying information for which
13 special protection from public disclosure and from use for any purpose other than
14 litigation of this action is warranted. Such confidential and proprietary materials and
15 information may consist of, among other things, confidential business or financial
16 information, information regarding confidential business practices, business plans, or
17 other competitively-sensitive and confidential information (including information
18 implicating privacy rights of third parties, such as financial information or personal
19 identifying information of employees and customers of both Plaintiffs and
20 Defendants), information otherwise generally unavailable to the public, or which may
21 be privileged or otherwise protected from disclosure under state or federal statutes,
22 court rules, case decisions, or common law. Additionally, the parties anticipate that
23 this action will involve disclosure of extremely sensitive, confidential, and proprietary
24 business, competitively-sensitive trade secret information which requires treatment as
25 highly confidential.

26 Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately
28 protect information the Parties are entitled to keep confidential, to ensure that the

1 Parties are permitted reasonable necessary uses of such material in preparation for
2 and in the conduct of this Action, to address their handling at the end of the litigation,
3 and to serve the ends of justice, a protective order for such information is justified in
4 this matter. It is the intent of the Parties that information will not be designated as
5 Protected Material for tactical reasons and that nothing be so designated without a
6 good faith belief that it has been maintained in a confidential, non-public manner, and
7 that there is good cause why it should not be part of the public record of this case.

8 2. DEFINITIONS

9 2.1 Action: this pending lawsuit captioned *NBCUniversal Media, LLC, et*
10 *al. v. Jay Kennette Media Group LLC, et al.*, Central District of California, Case No.
11 2:22-cv-04541-SB-JPR.

12 2.2 Challenging Party: a Party or Nonparty that challenges the designation
13 of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored, or maintained) or tangible things that qualify for protection
16 under Federal Rule of Civil Procedure 26(c) and as specified above in the Good Cause
17 Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
19 support staff).

20 2.5 Designating Party: a Party or Nonparty that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

28

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this action.

4 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 Information or Items: shall mean extremely sensitive Confidential Information or
6 Items, the disclosure of which to another Party or Non-Party would create a
7 substantial risk of serious harm that could not be avoided by less restrictive means.

8 2.9 House Counsel: attorneys who are employed as litigation counsel by a
9 Party to this Action and not under a duty to use any disclosed AEO information to
10 improve the Plaintiffs’ competitive advantage over the Defendants. House Counsel
11 does not include attorneys who are employed as non-litigation counsel by a Party to
12 this Action, Outside Counsel of Record, or any other outside counsel.

13 2.10 Nonparty: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this action.

15 2.11 Outside Counsel of Record: attorneys who are not employees of a Party
16 to this Action but are retained to represent or advise a Party and have appeared in this
17 Action on behalf of that Party or are affiliated with a law firm that has appeared on
18 behalf of that Party, including support staff.

19 2.12 Party: any Party to this Action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.13 Producing Party: a Party or Nonparty that produces Disclosure or
23 Discovery Material in this Action.

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

28

1 2.15 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY.”

4 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 3. SCOPE

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

12 Any use of Protected Material at trial will be governed by the orders of the trial
13 judge. This Order does not govern the use of Protected Material at trial.

14 4. DURATION

15 Once the Action proceeds to trial, all of the documents and information
16 introduced in evidence or otherwise disclosed in open court, including material that
17 was previously designated as Protected Material or maintained pursuant to this Order,
18 shall be presumptively available to all members of the public, including the press,
19 unless compelling reasons supported by specific factual findings to proceed otherwise
20 are made to the Court in advance of the trial. *See Kamakana v. City and Cty. of*
21 *Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
22 showing for sealing documents produced in discovery from “compelling reasons”
23 standard when merits-related documents are part of court record).

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Each Party or Nonparty that designates information or items for
26 protection under this Order must take care to limit any such designation to specific
27 material that qualifies under the appropriate standards. The Designating Party must
28 designate for protection only those parts of material, documents, items, or oral or

1 written communications that qualify so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

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

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

13 5.2 Except as otherwise provided in this Order, Disclosure or Discovery
14 Material that qualifies for protection under this Order must be clearly so designated
15 before the material is disclosed or produced.

16 Designation in conformity with this Order requires the following:

17 (a) for information in documentary form (for example, paper or electronic
18 documents but excluding transcripts of depositions or other pretrial or trial
19 proceedings), the Producing Party must affix at a minimum the legend
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY" to each page that contains Protected Material. If only a portion or portions
22 of the material on a page qualify for protection, the Producing Party must clearly
23 identify the protected portion(s) (for example, by making appropriate markings in the
24 margins).

25 A Party or Nonparty that makes original documents available for
26 inspection need not designate them for protection until after the inspecting Party has
27 indicated which documents it would like copied and produced. During the inspection
28 and before the designation, all material made available for inspection must be treated

1 as “CONFIDENTIAL.” After the inspecting Party has identified the documents it
2 wants copied and produced, the Producing Party must determine which documents,
3 or portions thereof, qualify for protection under this Order. Then, before producing
4 the specified documents, the Producing Party must affix the “CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to each page
6 that contains Protected Material. If only a portion or portions of the material on a
7 page qualify for protection, the Producing Party also must clearly identify the
8 protected portion(s) (for example, by making appropriate markings in the margins).

9 (b) for testimony given in depositions, the Designating Party must identify the
10 Disclosure or Discovery Material that is protected on the record, before the close of
11 the deposition.

12 (c) for information produced in some form other than documentary and for any
13 other tangible items, the Producing Party must affix in a prominent place on the
14 exterior of the container or containers in which the information is stored the legend
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY.” If only a portion or portions of the information warrant protection, the
17 Producing Party, to the extent practicable, must identify the protected portion(s).

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

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Any Party or Nonparty may challenge a designation of confidentiality at
25 any time consistent with the Court’s scheduling order.

26 6.2 The Challenging Party must initiate the dispute-resolution process (and,
27 if necessary, file a discovery motion) under Local Rule 37.

1 6.3 The burden of persuasion in any such proceeding is on the Designating
2 Party. Frivolous challenges, and those made for an improper purpose (for example,
3 to harass or impose unnecessary expenses and burdens on other parties), may expose
4 the Challenging Party to sanctions. Unless the Designating Party has waived or
5 withdrawn the confidentiality designation, all parties must continue to afford the
6 material in question the level of protection to which it is entitled under the Producing
7 Party’s designation until the Court rules on the challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a manner sufficiently secure to ensure that access is limited to the
17 people authorized under this Order.

18 7.2 Unless otherwise ordered by the Court or permitted in writing by the
19 Designating Party, a Receiving Party may disclose any information or item designated
20 “CONFIDENTIAL” only to the following people:

21 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
22 as employees of that Outside Counsel of Record to whom it is reasonably necessary
23 to disclose the information for this Action;

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

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

- 1 (d) the Court and its personnel;
- 2 (e) court reporters and their staff;
- 3 (f) professional jury or trial consultants, mock jurors, and Professional
- 4 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 5 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 (g) the author or recipient of a document containing the information or a
- 7 custodian or other person who otherwise possessed or knew the information;
- 8 (h) during their depositions, witnesses and attorneys for witnesses to whom
- 9 disclosure is reasonably necessary, provided that the deposing party requests that the
- 10 witness sign the form attached as Exhibit A hereto and the witnesses will not be
- 11 permitted to keep any confidential information unless they sign the form, unless
- 12 otherwise agreed by the Designating Party or ordered by the Court. Pages of
- 13 transcribed deposition testimony or exhibits to depositions that reveal Protected
- 14 Material may be separately bound by the court reporter and may not be disclosed to
- 15 anyone except as permitted under this Order; and
- 16 (i) any mediator or settlement officer, and their supporting personnel,
- 17 mutually agreed on by any of the Parties engaged in settlement discussions or
- 18 appointed by the Court.

19 7.3 Unless otherwise ordered by the Court or permitted in writing by the

20 Designating Party, a Receiving Party may disclose any information or item designated

21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to the following

22 people:

- 23 (a) the Receiving Party’s Counsel in this action and employees of such Counsel
- 24 to whom it is reasonably necessary to disclose this information;
- 25 (b) the Court and its personnel;
- 26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
- 27 is reasonably necessary for this Action and who have signed the Acknowledgment
- 28 and Agreement to Be Bound (Exhibit A), provided that if a Party desires to disclose

1 any Highly Confidential – Attorneys’ Eyes Only Information or Item to any Expert
2 who is also an employee, officer, director, or agent of a Party, said Party shall make
3 a written request to the Designating Party that (1) identifies the general categories of
4 Highly Confidential – Attorneys’ Eyes Only Information or Items that the Receiving
5 Party seeks to disclose, and (2) identifies the Expert by full name, relationship to the
6 Receiving Party, and city and state of his or her primary residence. A Party that makes
7 a request and provides the information specified in this Subsection (c) may disclose
8 the designated materials to the identified Expert, unless, within ten (10) days of
9 delivering the request, the Party receives a written objection from the Designating
10 Party. All challenges to objections from the Designating Party under this Subsection
11 (c) shall proceed under Local Rule 37.1 through Local Rule 37.4;

12 (d) court reporters and their staff;

13 (e) professional jury or trial consultants, mock-jurors, and Professional
14 Vendors to whom disclosure is reasonably necessary for this Action and who have
15 signed the Acknowledgment and Agreement to Be Bound (Exhibit A), provided they
16 are not permitted to retain copies of any such material;

17 (f) Professional Vendors to whom disclosure is reasonably necessary for this
18 Action and who have signed the Acknowledgment and Agreement to Be Bound
19 (Exhibit A);

20 (g) The author or recipient of a document containing the material, or a custodian
21 or other person who otherwise possessed or knew the information.

22 (h) any mediators or settlement officers, and their supporting personnel,
23 mutually agreed upon by any of the Parties engaged in settlement discussions or
24 appointed by the Court.

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
26 OTHER LITIGATION

27 If a Party is served with a subpoena or a court order issued in other litigation
28 that compels disclosure of any information or items designated in this Action as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY,” that Party must

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

5 (b) promptly notify in writing the party who caused the subpoena or order
6 to issue in the other litigation that some or all of the material covered by the subpoena
7 or order is subject to this Protective Order. Such notification must include a copy of
8 this Order; and

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

11 If the Designating Party timely seeks a protective order, the Party served with
12 the subpoena or court order should not produce any information designated in this
13 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
14 EYES ONLY” before a determination on the protective-order request by the relevant
15 court unless the Party has obtained the Designating Party’s permission. The
16 Designating Party bears the burden and expense of seeking protection of its
17 Confidential Material, and nothing in these provisions should be construed as
18 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
19 directive from another court.

20 9. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
21 IN THIS LITIGATION

22 (a) The terms of this Order are applicable to information produced by a
23 Nonparty in this Action and designated as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information is protected
25 by the remedies and relief provided by this Order. Nothing in these provisions should
26 be construed as prohibiting a Nonparty from seeking additional protections.

27 (b) In the event that a Party is required by a valid discovery request to
28 produce a Nonparty’s Confidential Information in its possession and the Party is

1 subject to an agreement with the Nonparty not to produce the Nonparty’s Confidential
2 Information, then the Party must

3 (1) promptly notify in writing the Requesting Party and the Nonparty
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Nonparty;

6 (2) promptly provide the Nonparty with a copy of this Order, the relevant
7 discovery request(s), and a reasonably specific description of the information
8 requested; and

9 (3) make the information requested available for inspection by the
10 Nonparty, if requested.

11 (c) If the Nonparty fails to seek a protective order within 21 days of
12 receiving the notice and accompanying information, the Receiving Party may produce
13 the Nonparty’s Confidential Information responsive to the discovery request. If the
14 Nonparty timely seeks a protective order, the Receiving Party must not produce any
15 information in its possession or control that is subject to the confidentiality agreement
16 with the Nonparty before a ruling on the protective-order request. Absent a court
17 order to the contrary, the Nonparty must bear the burden and expense of seeking
18 protection of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that by inadvertence or otherwise, it has disclosed
21 Protected Material to any person or in any circumstance not authorized under this
22 Order, the Receiving Party must immediately notify the Designating Party in writing
23 of the unauthorized disclosures, use its best efforts to retrieve all unauthorized copies
24 of the Protected Material, inform the person or people to whom unauthorized
25 disclosures were made of the terms of this Order, and ask that person or people to
26 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
27 as Exhibit A.

28

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection,
5 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B).

7 12. MISCELLANEOUS

8 12.1 Nothing in this Order abridges the right of any person to seek its
9 modification by the Court.

10 12.2 By stipulating to the entry of this Order, no Party waives any right it
11 otherwise would have to object to disclosing or producing any information or item on
12 any ground not addressed in this Order. Similarly, no Party waives any right to object
13 on any ground to use in evidence of any of the material covered by this Order.

14 12.3 A Party that seeks to file under seal any Protected Material must comply
15 with Civil Local Rule 79-5. Protected Material may be filed under seal only pursuant
16 to a court order authorizing the sealing of the specific Protected Material at issue. If
17 a Party's request to file Protected Material under seal is denied, then the Receiving
18 Party may file the information in the public record unless otherwise instructed by the
19 Court.

20 13. FINAL DISPOSITION

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

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

10 14. SANCTIONS

11 Any willful violation of this Order may be punished by civil or criminal
12 contempt, financial or evidentiary sanctions, reference to disciplinary authorities, or
13 other appropriate action at the discretion of the Court.

14
15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 Dated: January 10, 2023

JENNER & BLOCK LLP

17
18
19 By: /s/ Andrew J. Thomas
20 Andrew J. Thomas
Lauren M. Greene
21 *Attorneys for Plaintiffs*
22 *NBCUniversal Media, LLC, Universal*
23 *Television LLC, and Universal Studios*
Licensing LLC

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Dated: January 10, 2023

BRAUN IP LAW, LLC

By: /s/ Jeanette M. Braun
Jeanette M. Braun

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*Attorneys for Defendants
Jay Kennette Media Group LLC, Gooder
Labs, LLC, and Kenneth Talbert*

**Pursuant to C.D. Cal. L.R. 5-4.3.4(a)(2)(i), the filer hereby attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.*



DATED: January 18, 2023

JEAN P. ROSENBLUTH
U.S. MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [full name], of _____
5 [full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the U.S. District Court
7 for the Central District of California on [date] in the case of *NBCUniversal Media,*
8 *LLC, et al. v. Jay Kennette Media Group LLC, et al.*, Case No. 2:22-cv-04541-SB-
9 JPR. I agree to comply with and to be bound by all terms of this Stipulated Protective
10 Order, and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment, including contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the U.S. District Court for the
16 Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [full name] of
19 _____ [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 Date: _____

23
24 City and State where signed: _____

25
26 Printed name: _____

27
28 Signature: _____