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 AND DEP. DEYLAN KENNEDY
 8

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

11 DEMAR SMITH, individually and as
 Successor in Interest to ANTHONIE
 12 SMITH, deceased,

13 Plaintiff,
 14 v.

15 COUNTY OF RIVERSIDE, a
 municipal entity, and DOES 1 through
 16 10, inclusive,

17 Defendant.

Case No. 5:16-CV-00227-JGB(KKx)
 Consolidated with
 Case No. 5:16-CV-01323-JGB(KKx)

The Hon. District Judge, Jesus G.
 Bernal, Magistrate, Kenly Kiya Kato

[DISCOVERY MATTER]

**STIPULATED PROTECTIVE
 ORDER**

18 SYBIL DAVIS, an individual and as a
 Successor in Interest to ANTHONIE D.
 19 SMITH; A.Y.D., a minor and as a
 Successor in Interest to ANTHONIE D.
 20 SMITH, by and through her Guardian
 Ad Litem SYBIL DAVIS; N.A.D., a
 21 minor and as a Successor in Interest to
 ANTHONIE D. SMITH, by and
 22 through her Guardian Ad Litem SYBIL
 DAVIS,

23 Plaintiffs,
 24 v.

25 THE COUNTY OF RIVERSIDE; THE
 26 CITY OF MORENO VALLEY; and
 DOES 1 through 50, inclusive,
 27

28 Defendants.

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth in
11 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a party
14 seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 Plaintiffs have requested, by way of written discovery, materials pertaining to
17 the Riverside County Sheriff’s Department’s and/or District Attorney’s investigation
18 into the shooting death of Anthonie Smith. Defendants have also identified materials
19 pertaining to the Riverside County Sheriff’s Department’s and/or District Attorney’s
20 investigation into the shooting death of Anthonie Smith in their initial disclosures.
21 These documents contain information of a privileged, confidential, private, or
22 sensitive nature, and the parties believe that public dissemination of this information
23 would jeopardize compelling interests in preserving the integrity of the Riverside
24 County Sheriff’s Department’s investigation. This confidential information is in the
25 possession of the Defendants. Defendants have agreed to produce this information
26 pursuant to the terms and conditions found in the instant protective order.

27 Accordingly, to expedite the flow of information, to facilitate the prompt
28 resolution of disputes over confidentiality of discovery materials, to adequately

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

9 2. DEFINITIONS

10 2.1 Action: this pending federal law suit, *Demar Smith v. County of Riverside*,
11 *et al.*, Case No. 5:16-CV-00227-JGB(KKx), consolidated with *Sybil Davis, et al. v.*
12 *The County of Riverside, et al.*, Case No. 5:16-CV-01323 JGB(KKx).

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

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

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

21 2.5 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or responses to discovery as
23 “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless of
25 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.
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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 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm which
12 has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material. Any
4 use of Protected Material at trial shall be governed by the orders of the trial judge.
5 This Order does not govern the use of Protected Material at trial.

6 4. DURATION

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

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under
18 this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
24 designations are prohibited. Designations that are shown to be clearly unjustified
25 or that have been made for an improper purpose (e.g., to unnecessarily encumber
26 the case development process or to impose unnecessary expenses and burdens on
27 other parties) may expose the Designating Party to sanctions. If it comes to a
28 Designating Party's attention that information or items that it designated for

1 protection do not qualify for protection, that Designating Party must promptly
2 notify all other Parties that it is withdrawing the inapplicable designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this
4 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
6 under this Order must be clearly so designated before the material is disclosed or
7 produced.

8 Designation in conformity with this Order requires:

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

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

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

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

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 Designating Party’s right to secure protection under this Order for such material. Upon
13 timely correction of a designation, the Receiving Party must make reasonable efforts to
14 assure that the material is treated in accordance with the provisions of this Order.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
17 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
19 process under Local Rule 37.1 et seq.

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

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a Receiving
7 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
8 Protected Material must be stored and maintained by a Receiving Party at a location
9 and in a secure manner that ensures that access is limited to the persons authorized
10 under this Order.

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

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

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

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

22 (d) the court and its personnel;

23 (e) court reporters and their staff;

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

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

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

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

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

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

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

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

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

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

1 Designating Party shall bear the burden and expense of seeking protection in that court
2 of its confidential material and nothing in these provisions should be construed as
3 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
4 directive from another court.

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

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

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

15 confidential information, then the Party shall:

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

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

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

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

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

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.

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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

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

12 **13. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in paragraph 4, within 60
14 days of a written request by the Designating Party, each Receiving Party must return all
15 Protected Material to the Producing Party or destroy such material. **The Action is not**
16 **deemed to have a final disposition until all appeals and rights of appeal are**
17 **exhausted.**

18 **The Designating Party is required to maintain all returned Protected**
19 **Material in its original form for a period of five years after its return and in the**
20 **make it available on demand to any Receiving Party who returns the same in the**
21 **event that such material is needed by the Receiving Party in connection with any**
22 **litigation or administrative action.**

23 As used in this subdivision, “all Protected Material” includes all copies,
24 abstracts, compilations, summaries, and any other format reproducing or capturing any
25 of the Protected Material. Whether the Protected Material is returned or destroyed, the
26 Receiving Party must submit a written certification to the Producing Party (and, if not
27 the same person or entity, to the Designating Party) by the 60 day deadline that (1)
28 identifies (by category, where appropriate) all the Protected Material that was returned

1 or destroyed and (2) affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or any other format reproducing or capturing any of
3 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
4 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
5 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
6 work product, and consultant and expert work product, even if such materials contain
7 Protected Material. **A Receiving Party may designate at its sole discretion returned**
8 **Protected Material as “Confidential”. If a Receiving Party designates returned**
9 **material as Confidential, and returns that material in a sealed envelope or**
10 **container so designating, the Designating Party may not open such envelope or**
11 **container absent either consent of the Receiving Party, an order or subpoena from**
12 **Court or an Administrative Tribunal of competent jurisdiction. The Designating**
13 **Party shall, immediately notify the Receiving Party of any subpoena, order or**
14 **other proceeding seeking to compel production of any Confidential Material.** Any
15 such archival copies that contain or constitute Protected Material remain subject to this
16 Protective Order as set forth in Section 4 (DURATION).

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

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 DATED: March 30, 2017

THE COCHRAN FIRM CALIFORNIA

2 By: /s/ Megan R. Gyongyos

3 Brian T. Dunn, Esq.
4 Megan R. Gyongyos, Esq.
5 Attorney for Plaintiff, DEMAR SMITH,
6 INDIVIDUALLY AND AS SUCCESSOR IN
7 INTEREST TO ANTHONIE SMITH,
8 DECEASED

8 DATED: March 30, 2017

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

9 By: /s/ Kayleigh A. McGuinness

10 Eugene P. Ramirez, Esq.
11 Kayleigh A. McGuinness, Esq.
12 Attorneys for Defendants, COUNTY OF
13 RIVERSIDE, CITY OF MORENO VALLEY,
14 CORPORAL SHEREE ANTHONY, DEPUTY
15 DEYLAN KENNEDY

16 DATED: March 30, 2017

HARRIS & ASSOCIATES

17 By: /s/ Paul Eisner

18 John W. Harris, Esq.
19 Paul Eisner, Esq.
20 Attorneys for Plaintiffs, SYBIL DAVIS, A.Y.D.,
21 N.A.D,
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1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

2 DATED: Msrch 31, 2017

Kenly

3 Kenly Kiya Kato
4 United States Magistrate Judge

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1 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

2 I, _____ [print or type full name], of
3 _____ [print or type full address],

4 declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for
6 the Central District of California on [date] in the case of *Demar Smith v. County of*
7 *Riverside, et al., Case No. 5:16-CV-00227-JGB(KKx), consolidated with Sybil*
8 *Davis, et al. v. The County of Riverside, et al., Case No. 5:16-CV-01323 JGB(KKx).*

9 I agree to comply with and to be bound by all the 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 in the nature of contempt. I solemnly promise that I
12 will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with
14 the provisions of this Order. I further agree to submit to the jurisdiction of the
15 United States District Court for the Central District of California for the purpose of
16 enforcing the terms of this Stipulated Protective Order, even if such enforcement
17 proceedings occur after termination of this action. I hereby appoint

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

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28