

1 TODD W. BURNS (Cal. Bar No. 194937)
 GABRIEL L. COHAN (Cal. Bar No. 259449)
 2 Burns & Cohan, Attorneys at Law
 1350 Columbia Street, Suite 600
 San Diego, California 92101
 3 Telephone: (619) 236-0244
todd@burnsandcohan.com
gabriel@burnsandcohan.com

5 Attorneys for Plaintiff Darla Drinan

6 TRACY L. WILKISON
 United States Attorney
 7 DAVID M. HARRIS
 Assistant United States Attorney
 8 Chief, Civil Division
 JOANNE S. OSINOFF
 Assistant United States Attorney
 9 Chief, General Civil Section
 JENNIFER R. JACOBS (Cal. Bar No. 157609)
 10 Assistant United States Attorney
 300 North Los Angeles Street, Ste. 7516
 11 Los Angeles, California 90012
 Telephone: (213) 894-6167
 12 E-mail: jennifer.jacobs3@usdoj.gov

13 Attorneys for Defendants United States of
 America and Joshua Bisch

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

16 DARLA DRINAN,
 17
 18 Plaintiff(s),

19 v.

19 UNITED STATES OF AMERICA,
 20 JOSHUA BISCH, AND DOES 1-10,

21 Defendant(s).

Case No. 5:20-CV-01634-GW-SHK

**STIPULATED PROTECTIVE
 ORDER**

1 **I. PURPOSES AND LIMITATIONS**

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

20 A. This action involves portions of personnel files, including Officer
21 Bisch's performance evaluations, financial and medical information for
22 which special protection from public disclosure and from use for any
23 purpose other than prosecution of this action is warranted. Such
24

1 confidential materials and information consist of, among other things,
2 confidential financial information, information regarding confidential
3 performance evaluations and potentially other sensitive information in
4 personnel files, medical records and/or other confidential information
5 (including information implicating privacy rights of the parties),
6 information otherwise generally unavailable to the public, or which may be
7 privileged or otherwise protected from disclosure under state or federal
8 statutes, court rules, case decisions, or common law. Accordingly, to
9 expedite the flow of information, to facilitate the prompt resolution of
10 disputes over confidentiality of discovery materials, to adequately protect
11 information the parties are entitled to keep confidential, to ensure that the
12 parties are permitted reasonable necessary uses of such material in
13 preparation for and in the conduct of trial, to address their handling at the
14 end of the litigation, and serve the ends of justice, a protective order for
15 such information is justified in this matter. It is the intent of the parties that
16 information will not be designated as confidential for tactical reasons and
17 that nothing be so designated without a good faith belief that it has been
18 maintained in a confidential, non-public manner, and there is good cause
19 why it should not be part of the public record of this case.
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23 **III. DEFINITIONS**

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- 1 A. Action: This pending federal law suit.
- 2 B. Challenging Party: A Party or Non-Party that challenges the
3 designation of information or items under this Order.
- 4 C. “CONFIDENTIAL” Information or Items: Information (regardless
5 of how it is generated, stored or maintained) or tangible things that qualify
6 for protection under Federal Rule of Civil Procedure 26(c), and as specified
7 above in the Good Cause Statement.
- 8 D. Counsel: Outside Counsel of Record and House Counsel (as well as
9 their support staff).
- 10 E. Designating Party: A Party or Non-Party that designates information
11 or items that it produces in disclosures or in responses to discovery as
12 “CONFIDENTIAL.”
- 13 F. Disclosure or Discovery Material: All items or information,
14 regardless of the medium or manner in which it is generated, stored, or
15 maintained (including, among other things, testimony, transcripts, and
16 tangible things), that are produced or generated in disclosures or responses
17 to discovery in this matter.
- 18 G. Expert: A person with specialized knowledge or experience in a
19 matter pertinent to the litigation who has been retained by a Party or its
20 counsel to serve as an expert witness or as a consultant in this Action.
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1 H. House Counsel: Attorneys who are employees of a party to this
2 Action, such as Agency Counsel for the U.S. Department of Veterans
3 Affairs. House Counsel does not include Outside Counsel of Record or any
4 other outside counsel.

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6 I. Non-Party: Any natural person, partnership, corporation, association,
7 or other legal entity not named as a Party to this action.

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

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

17
18 L. Producing Party: A Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

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

1 N. Protected Material: Any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 O. Receiving Party: A Party that receives Disclosure or Discovery
4 Material from a Producing Party.
5

6 **IV. SCOPE**

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

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

18 **V. DURATION**

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party
21 agrees otherwise in writing or a court order otherwise directs. Final
22 disposition shall be deemed to be the later of (1) dismissal of all claims and
23 defenses in this Action, with or without prejudice; and (2) final judgment
24

1 herein after the completion and exhaustion of all appeals, rehearings,
2 remands, trials, or reviews of this Action, including the time limits for filing
3 any motions or applications for extension of time pursuant to applicable
4 law.

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6 **VI. DESIGNATING PROTECTED MATERIAL**

7 A. Exercise of Restraint and Care in Designating Material for Protection

8 1. Each Party or Non-Party that designates information or items
9 for protection under this Order must take care to limit any such
10 designation to specific material that qualifies under the appropriate
11 standards. The Designating Party must designate for protection only
12 those parts of material, documents, items, or oral or written
13 communications that qualify so that other portions of the material,
14 documents, items, or communications for which protection is not
15 warranted are not swept unjustifiably within the ambit of this Order.

16
17 2. Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified or that have
19 been made for an improper purpose (e.g., to unnecessarily encumber
20 the case development process or to impose unnecessary expenses and
21 burdens on other parties) may expose the Designating Party to
22 sanctions.
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1 3. If it comes to a Designating Party’s attention that information
2 or items that it designated for protection do not qualify for protection,
3 that Designating Party must promptly notify all other Parties that it is
4 withdrawing the inapplicable designation.
5

6 B. Manner and Timing of Designations

7 1. Except as otherwise provided in this Order (*see, e.g.*, Section
8 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
9 Discovery Material that qualifies for protection under this Order must
10 be clearly so designated before the material is disclosed or produced.
11

12 2. Designation in conformity with this Order requires the
13 following:

14 a. For information in documentary form (e.g., paper or
15 electronic documents, but excluding transcripts of depositions
16 or other pretrial or trial proceedings), that the Producing Party
17 affix at a minimum, the legend “CONFIDENTIAL”
18 (hereinafter “CONFIDENTIAL legend”), to each page that
19 contains protected material. If only a portion or portions of the
20 material on a page qualifies for protection, the Producing Party
21 also must clearly identify the protected portion(s) (e.g., by
22 making appropriate markings in the margins).
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1 b. A Party or Non-Party that makes original documents
2 available for inspection need not designate them for protection
3 until after the inspecting Party has indicated which documents
4 it would like copied and produced. During the inspection and
5 before the designation, all of the material made available for
6 inspection shall be deemed “CONFIDENTIAL.” After the
7 inspecting Party has identified the documents it wants copied
8 and produced, the Producing Party must determine which
9 documents, or portions thereof, qualify for protection under
10 this Order. Then, before producing the specified documents,
11 the Producing Party must affix the “CONFIDENTIAL legend”
12 to each page that contains Protected Material. If only a portion
13 or portions of the material on a page qualifies for protection,
14 the Producing Party also must clearly identify the protected
15 portion(s) (e.g., by making appropriate markings in the
16 margins).

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20 c. For testimony given in depositions, that the Designating
21 Party identify the Disclosure or Discovery Material on the
22 record, before the close of the deposition all protected
23 testimony.
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1 d. For information produced in form other than document
2 and for any other tangible items, that the Producing Party affix
3 in a prominent place on the exterior of the container or
4 containers in which the information is stored the legend
5 “CONFIDENTIAL.” If only a portion or portions of the
6 information warrants protection, the Producing Party, to the
7 extent practicable, shall identify the protected portion(s).
8

9 C. Inadvertent Failure to Designate

10 1. If timely corrected, an inadvertent failure to designate qualified
11 information or items does not, standing alone, waive the Designating
12 Party’s right to secure protection under this Order for such material.
13 Upon timely correction of a designation, the Receiving Party must
14 make reasonable efforts to assure that the material is treated in
15 accordance with the provisions of this Order.
16

17 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**
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19 A. Timing of Challenges

20 1. Any party or Non-Party may challenge a designation of
21 confidentiality at any time that is consistent with the Court’s
22 Scheduling Order.

23 B. Meet and Confer
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1 1. The Challenging Party shall initiate the dispute resolution
2 process under Local Rule 37.1 et seq.

3 C. The burden of persuasion in any such challenge proceeding shall be
4 on the Designating Party. Frivolous challenges, and those made for an
5 improper purpose (e.g., to harass or impose unnecessary expenses and
6 burdens on other parties) may expose the Challenging Party to sanctions.
7 Unless the Designating Party has waived or withdrawn the confidentiality
8 designation, all parties shall continue to afford the material in question the
9 level of protection to which it is entitled under the Producing Party's
10 designation until the Court rules on the challenge.
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13 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 A. Basic Principles

15 1. A Receiving Party may use Protected Material that is disclosed
16 or produced by another Party or by a Non-Party in connection with
17 this Action only for prosecuting, defending, or attempting to settle
18 this Action. Such Protected Material may be disclosed only to the
19 categories of persons and under the conditions described in this
20 Order. When the Action has been terminated, a Receiving Party must
21 comply with the provisions of Section XIV below.
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1 2. Protected Material must be stored and maintained by a
2 Receiving Party at a location and in a secure manner that ensures that
3 access is limited to the persons authorized under this Order.

4 B. Disclosure of “CONFIDENTIAL” Information or Items

5 1. Unless otherwise ordered by the Court or permitted in writing
6 by the Designating Party, a Receiving Party may disclose any
7 information or item designated “CONFIDENTIAL” only to:

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

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

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

19 d. The Court and its personnel;

20 e. Court reporters and their staff;

1 f. Professional jury or trial consultants, mock jurors, and
2 Professional Vendors to whom disclosure is reasonably
3 necessary or this Action and who have signed the
4 “Acknowledgment and Agreement to be Bound” attached as
5 Exhibit A hereto;
6

7 g. The author or recipient of a document containing the
8 information or a custodian or other person who otherwise
9 possessed or knew the information;

10 h. During their depositions, witnesses, and attorneys for
11 witnesses, in the Action to whom disclosure is reasonably
12 necessary provided: (i) the deposing party requests that the
13 witness sign the “Acknowledgment and Agreement to Be
14 Bound;” and (ii) they will not be permitted to keep any
15 confidential information unless they sign the
16 “Acknowledgment and Agreement to Be Bound,” unless
17 otherwise agreed by the Designating Party or ordered by the
18 Court. Pages of transcribed deposition testimony or exhibits to
19 depositions that reveal Protected Material may be separately
20 bound by the court reporter and may not be disclosed to
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1 anyone except as permitted under this Stipulated Protective
2 Order; and

3 i. Any mediator or settlement officer, and their supporting
4 personnel, mutually agreed upon by any of the parties engaged
5 in settlement discussions.
6

7 **IX. PROTECTED MATERIAL SUPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

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

- 13 1. Promptly notify in writing the Designating Party. Such
14 notification shall include a copy of the subpoena or court order;
- 15 2. Promptly notify in writing the party who caused the subpoena
16 or order to issue in the other litigation that some or all of the material
17 covered by the subpoena or order is subject to this Protective Order.

18 Such notification shall include a copy of this Stipulated Protective
19 Order; and

- 20 3. Cooperate with respect to all reasonable procedures sought to
21 be pursued by the Designating Party whose Protected Material may
22 be affected.
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1 B. If the Designating Party timely seeks a protective order, the Party
2 served with the subpoena or court order shall not produce any information
3 designated in this action as “CONFIDENTIAL” before a determination by
4 the Court from which the subpoena or order issued, unless the Party has
5 obtained the Designating Party’s permission. The Designating Party shall
6 bear the burden and expense of seeking protection in that court of its
7 confidential material and nothing in these provisions should be construed as
8 authorizing or encouraging a Receiving Party in this Action to disobey a
9 lawful directive from another court.
10

11 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
12 **PRODUCED IN THIS LITIGATION**
13

14 A. The terms of this Order are applicable to information produced by a
15 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
16 information produced by Non-Parties in connection with this litigation is
17 protected by the remedies and relief provided by this Order. Nothing in
18 these provisions should be construed as prohibiting a Non-Party from
19 seeking additional protections.
20

21 B. In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the
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1 Party is subject to an agreement with the Non-Party not to produce the Non-
2 Party's confidential information, then the Party shall:

- 3 1. Promptly notify in writing the Requesting Party and the Non-
4 Party that some or all of the information requested is subject to a
5 confidentiality agreement with a Non-Party;
6
- 7 2. Promptly provide the Non-Party with a copy of the Stipulated
8 Protective Order in this Action, the relevant discovery request(s), and
9 a reasonably specific description of the information requested; and
- 10 3. Make the information requested available for inspection by the
11 Non-Party, if requested.
12

13 C. If the Non-Party fails to seek a protective order from this court
14 within 14 days of receiving the notice and accompanying information, the
15 Receiving Party may produce the Non-Party's confidential information
16 responsive to the discovery request. If the Non-Party timely seeks a
17 protective order, the Receiving Party shall not produce any information in
18 its possession or control that is subject to the confidentiality agreement with
19 the Non-Party before a determination by the court. Absent a court order to
20 the contrary, the Non-Party shall bear the burden and expense of seeking
21 protection in this court of its Protected Material.
22

23 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**
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1 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
2 disclosed Protected Material to any person or in any circumstance not
3 authorized under this Stipulated Protective Order, the Receiving Party must
4 immediately (1) notify in writing the Designating Party of the unauthorized
5 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
6 Protected Material, (3) inform the person or persons to whom unauthorized
7 disclosures were made of all the terms of this Order, and (4) request such
8 person or persons to execute the “Acknowledgment and Agreement to be
9 Bound” that is attached hereto as Exhibit A.
10

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12 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR**
13 **OTHERWISE PROTECTED MATERIAL**

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

3 **XIII. MISCELLANEOUS**

4 A. Right to Further Relief

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6 1. Nothing in this Order abridges the right of any person to seek
7 its modification by the Court in the future.

8 B. Right to Assert Other Objections

9
10 1. By stipulating to the entry of this Protective Order, no Party
11 waives any right it otherwise would have to object to disclosing or
12 producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right
14 to object on any ground to use in evidence of any of the material
15 covered by this Protective Order.

16 C. Filing Protected Material

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

3 **XIV. FINAL DISPOSITION**

4 A. After the final disposition of this Action, as defined in Section V,
5 within sixty (60) days of a written request by the Designating Party, each
6 Receiving Party must return all Protected Material to the Producing Party or
7 destroy such material. As used in this subdivision, “all Protected Material”
8 includes all copies, abstracts, compilations, summaries, and any other
9 format reproducing or capturing any of the Protected Material. Whether the
10 Protected Material is returned or destroyed, the Receiving Party must
11 submit a written certification to the Producing Party (and, if not the same
12 person or entity, to the Designating Party) by the 60 day deadline that (1)
13 identifies (by category, where appropriate) all the Protected Material that
14 was returned or destroyed and (2) affirms that the Receiving Party has not
15 retained any copies, abstracts, compilations, summaries or any other format
16 reproducing or capturing any of the Protected Material. Notwithstanding
17 this provision, Counsel are entitled to retain an archival copy of all
18 pleadings, motion papers, trial, deposition, and hearing transcripts, legal
19 memoranda, correspondence, deposition and trial exhibits, expert reports,
20 attorney work product, and consultant and expert work product, even if
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1 such materials contain Protected Material. Any such archival copies that
2 contain or constitute Protected Material remain subject to this Protective
3 Order as set forth in Section V.

4 B. Any violation of this Order may be punished by any and all
5 appropriate measures including, without limitation, contempt proceedings
6 and/or monetary sanctions.
7

8
9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10
11 Dated: November 17, 2021

/s/ Gabriel L. Cohan
Gabriel L. Cohan
BURNS & COHAN
Attorneys for Plaintiff Darla Drinan

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13
14
15 Dated: November 17, 2021

TRACY L. WILKISON
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

/s/--Jennifer R. Jacobs

JENNIFER R. JACOBS
Assistant United States Attorney
Attorneys for Defendants United
States of America and Joshua Bisch

1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

2
3 Dated: 11/19/2021


4 HON. SHASHI H. KEWALRAMANI
United States Magistrate Judge

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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 issue by the United States District Court for the Central District of California
7 on [DATE] in the case of _____ [insert formal name of
8 the case and the number and initials assigned to it by the Court]. I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to
11 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
14 with the provisions of this Order.
15
16

17 I further agree to submit to the jurisdiction of the United States District
18 Court for the Central District of California for the purpose of enforcing the terms
19 of this Stipulated Protective Order, even if such enforcement proceedings occur
20 after termination of this action. I hereby appoint _____
21 [print or type full name] of _____ [print or type full
22 address and telephone number] as my California agent for service of process in
23
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1 connection with this action or any proceedings related to enforcement of this

2 Stipulated Protective Order.

3 Date: _____

4 City and State where sworn and signed: _____

5 Printed Name: _____

6 Signature: _____

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