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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

13 G.E.T. ENTERPRISES, LLC., a
 14 Delaware Limited Liability Company

15 Plaintiff,

16 v.

17 RICHARD VANDER KAAAY &
 18 ASSOCIATES, INC., a California
 19 Corporation

20 Defendant.

Case No. 8:18-CV-0045-CJC (DFMx)

**STIPULATED PROTECTIVE
 ORDER**

The Hon. Cormac J. Carney

Action Filed: January 12, 2018
 Trial Date: None Set

21 RICHARD VANDER KAAAY &
 22 ASSOCIATES, INC., a California
 23 Corporation,

24 Counter-Claimant.

25 v.

26 G.E.T. ENTERPRISES, LLC, a Delaware
 27 Limited Liability Company,

28 Counter-Defendant,

1 Plaintiffs and Defendant having consented thereto, and for good cause shown,
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the documents and
3 other information, including the substance and content thereof, designated by any
4 party as confidential and proprietary, and produced by that party in response to any
5 formal or informal request for discovery in the above-captioned matter, shall be
6 subject to the terms of this Protective Order (“Protective Order” or “Order”), as set
7 forth below:

8 The purpose of this Order is to expedite the flow of discovery material,
9 facilitate the prompt resolution of disputes over confidentiality and privilege, and
10 protect material to be kept confidential or privileged, pursuant to the Court’s inherent
11 authority, its authority under Federal Rule of Civil Procedure 26(c) and Federal Rule
12 of Evidence 502(d), and the judicial opinions interpreting such Rules.

13 **I. CONFIDENTIALITY.**

- 14 1. *Information.* “Information” includes the contents of documents and other data, any
15 data and information associated with documents (whether physical or in electronic
16 format), oral and written testimony, answers to interrogatories, admissions, and
17 data and information derived from objects other than documents, produced or
18 disclosed in these proceedings by any party to the above-captioned litigation or by
19 any third party (the “Producing Party”) to any other party or parties, subject to the
20 provisions in Paragraphs 5 and 6 of this Order (the “Receiving Party”).
- 21 2. *Confidentiality Designations.* This Order covers Information that the Producing
22 Party designates “Confidential” or “Highly Confidential.” Information may be
23 designated as Confidential when (i) the Producing Party reasonably believes that
24 the Information constitutes, reflects, discloses or contains Information subject to
25 protection under Federal Rule of Civil Procedure 26(c) or other confidential, non-
26 public information, or (ii) the Producing Party reasonably believes that the
27 documents or information includes material protected by federal, state, or foreign
28 data protection laws or other privacy obligations, including (but not limited to)

1 consumer (other than Plaintiffs) and third-party names and other identifying or
2 sensitive personal information, such as Social Security Numbers; driver's license
3 or other identification numbers; personal financial information such as tax
4 information, bank account numbers, and credit card numbers; or the personal email
5 addresses or other contact information of Plaintiffs and Defendants, any subsidiary,
6 parent or affiliated corporation, present or former officer, director, agent,
7 employee, successor, predecessor, attorney, accountant, representative, or other
8 person acting or purporting to act on their behalves ("Personal Information").
9 Information may be designated as Highly Confidential when: (i) the Producing
10 Party reasonably believes that the documents or information contain competitively
11 sensitive information regarding future product designs or strategies, commercial or
12 financial information, or other sensitive information, the disclosure of which to
13 third party competitors may result in commercial harm; or (ii) the Producing Party
14 reasonably believes that the documents or information includes Personal
15 Information. Subject to provisions of Paragraph 3(b), the parties shall make
16 Confidential and Highly Confidential designations in good faith to ensure that only
17 those documents that merit Confidential or Highly Confidential treatments are so
18 designated. By entering into this stipulation, the parties do not waive their rights to
19 demand additional confidentiality protections for certain highly confidential,
20 commercially sensitive information.

21 3. *Procedure for Confidentiality Designations.*

- 22 (i) *Designation.* To designate Information as Confidential or Highly
23 Confidential, a Producing Party must mark it or identify it on the record
24 as such. Either designation may be withdrawn by the Producing Party.
- 25 (ii) *Bulk Designation.* To expedite production of potentially voluminous
26 materials a Producing Party may, but is not required to, produce materials
27 without a detailed confidentiality review, subject to the "clawback"
28 procedures in Paragraphs 3(f) and 9 of this Order or as otherwise agreed

1 to. In so doing, the Producing Party may designate those collections of
2 documents that by their nature contain “Confidential” or “Highly
3 Confidential” Information with the appropriate designation
4 notwithstanding that some of the documents within the collection may
5 not qualify for such designation. The materials that may be so designated
6 shall be limited to the types or categories of documents that the
7 Producing Party reasonably believes may contain Confidential or Highly
8 Confidential Information, as defined in Paragraph 2 of this Order.
9 Notwithstanding the foregoing, a Receiving Party may at any time
10 challenge the designation of one or more particular documents as
11 Confidential or Highly Confidential on the ground that it does not or they
12 do not qualify for such protection. If the Producing Party agrees, it must
13 promptly notify all Receiving Parties that it is withdrawing or changing
14 the designation.

15 (iii) *Marking.* All or any part of a document, tangible object, discovery
16 response, or pleading disclosed, produced, or filed by a Producing Party
17 may be designated Confidential or Highly Confidential by marking the
18 appropriate legend (“CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL”) on the face of the document and each page so
20 designated. With respect to tangible items or electronically stored
21 Information produced in native format, the appropriate legend shall be
22 marked on the face of the tangible item or media containing
23 electronically stored Information, if practicable, or by written notice to
24 the Receiving Party at the time of disclosure, production or filing that
25 such tangible item or media is Confidential or Highly Confidential or
26 contains such Information.

27 (iv) *Redaction.* Any Producing Party may redact from the documents and
28 things it produces any matter that the Producing Party claims is subject to

1 attorney-client privilege, work-product protection, a legal prohibition
2 against disclosure, or any other privilege or immunity. The redaction
3 shall be visible, and the Producing Party shall mark each thing where
4 matter has been redacted with a legend stating "PRIVILEGED," or a
5 comparable notice. Where a document consists of more than one page,
6 each page on which Information has been redacted shall be so marked.
7 The Producing Party shall preserve an unredacted version of each such
8 document. The process for challenging the designation of redactions shall
9 be the same as the process for challenging the designation of Confidential
10 Material and Highly Confidential Material set forth in Paragraph 4.

11 (v) *Timing.* Subject to the provisions of Paragraphs 3(f) and 9, documents
12 and other objects must be designated as Confidential or Highly
13 Confidential before disclosure. Any party or non-party may designate
14 depositions and other testimony as Confidential or Highly Confidential
15 by (i) indicating on the record at the time the testimony is given that the
16 entire testimony or portions thereof shall be designated as Confidential or
17 Highly Confidential or (ii) by captioned, written notice to the reporter
18 and all counsel of record, given within thirty (30) days after receipt of the
19 final transcript, in which case all counsel receiving such notice shall be
20 responsible for marking the copies of the designated transcript or portion
21 thereof in their possession or control as directed by the Producing Party.
22 Deposition testimony shall be treated as Confidential pending the thirty
23 (30) day deadline.

24 (vi) *Errors.* Disclosure of Confidential or Highly Confidential Information
25 does not waive the confidential status of such Information. In the event
26 that Confidential or Highly Confidential Information is disclosed without
27 a marking or designation of it as such, the Producing Party may thereafter
28 assert a claim or designation of confidentiality, and promptly provide

1 replacement media. Thereafter, the Receiving Party must immediately
2 return the original Confidential or Highly Confidential Information and
3 all copies of the same to the Producing Party and make no use of such
4 Information.

5 4. *Challenges to Confidentiality Designations.* Any party may object to the propriety
6 of the designation of specific material as Confidential or Highly Confidential by
7 serving a written objection upon the Producing Party’s counsel that sets forth, at a
8 minimum, specific identification of the designated material objected to as well as
9 the reason(s) for the objection. The Producing Party or its counsel shall thereafter,
10 within fourteen (14) calendar days, respond to such objection in writing by either:
11 (i) agreeing to remove the designation; or (ii) stating the reasons for such
12 designation. Counsel may agree to a reasonable extension of the fourteen-day
13 period, if necessary. If the objecting party and the Producing Party are
14 subsequently unable to agree upon the terms and conditions of disclosure for the
15 material(s) in issue, the objecting party may move the Court for an order
16 withdrawing the designation as to the specific designation on which the Parties
17 could not agree. On such a motion, the Producing Party shall have the burden of
18 proving that “good cause” exists for the designation at issue and that the material is
19 entitled to protection as Confidential or Highly Confidential Information under
20 applicable law. In the event a motion is filed by the objecting party, the
21 Information at issue shall continue to be treated in the manner as designated by the
22 Producing Party until the Court orders otherwise. A Receiving Party does not
23 waive its right to challenge a Confidential or Highly Confidential designation by
24 electing not to raise a challenge promptly after the original designation is disclosed
25 and may challenge a designation at such time as the Receiving Party deems
26 appropriate.

27 5. *Access to Confidential Information.* The Receiving Party may share Confidential
28 Information with only the following persons and entities related to the above-

1 captioned case:

- 2 (i) The Court and its staff;
- 3 (ii) Parties to the action;
- 4 (iii) Parties' counsel;
- 5 (iv) Court reporters (including audio and video), interpreters, translators,
6 copy services, graphic support services, document imaging services, and
7 database or coding services retained by counsel;
- 8 (v) Special masters;
- 9 (vi) Mediators;
- 10 (vii) The direct staff of those identified above;
- 11 (viii) Deponents and trial witnesses during a deposition or trial who have a
12 reasonable need to see the Confidential Information in order to provide
13 testimony, provided such witness executes a certification in the form
14 attached hereto as Appendix A;
- 15 (ix) Any expert or consultant, and his, her or its staff, hired by a party for
16 litigation purposes who agrees to be bound by this Order and signs the
17 certificate attached hereto as Appendix A; and
- 18 (x) Any other person to whom the Producing Party, in writing, authorizes
19 disclosure.

20 6. *Access to Highly Confidential Information.* The Receiving Party may share Highly
21 Confidential Information with only the following persons and entities related to the
22 above-captioned case:

- 23 (i) The Court and its staff;
- 24 (ii) Court reporters (including audio and video), interpreters, translators,
25 copy services, graphic support services, document imaging services, and
26 database or coding services retained by counsel;
- 27 (iii) Mediators and their staff, provided that such persons execute a
28 certification attached hereto as Appendix A;

- 1 (iv) A witness during a hearing, a deposition, or preparation for a deposition
2 who is a current employee of the Party that produced the applicable
3 document(s) or who appears, based upon the document itself or
4 testimony in a deposition, to have specific knowledge of the contents of
5 the documents designated “HIGHLY CONFIDENTIAL,” provided such
6 witness executes a certification in the form attached hereto as Appendix
7 A;
- 8 (v) Outside experts, consultants, or other agents retained by a party for
9 litigation purposes, provided such expert, consultant, or agent executes a
10 certification in the form attached hereto as Appendix A; and
- 11 (vi) Any other person to whom the Producing Party, in writing, authorizes
12 disclosure.

13 7. *Use of Confidential and Highly Confidential Information.*

- 14 (i) *Restricted to This Proceeding.* Confidential Information and Highly
15 Confidential Information must be used only in this proceeding and any
16 appeal therefrom and cannot be used for any other purpose including, but
17 not limited to, any other litigation, arbitration, or claim.
- 18 (ii) *Acknowledgement.* Subject to the restrictions contained in Paragraphs 5
19 and 6, the persons identified in Paragraphs 5 and 6 may receive or review
20 Confidential or Highly Confidential Information. All persons specifically
21 designated in Paragraphs 5 and 6 must execute the certificate attached
22 hereto as Appendix A or affirm on the record that he or she will not
23 disclose Confidential or Highly Confidential Information revealed during
24 a deposition and will keep the transcript confidential.
- 25 (iii) *Filings.* All parties shall make reasonable efforts to avoid requesting the
26 filing of Confidential or Highly Confidential Information under seal by,
27 for example, redacting or otherwise excluding from a submission to the
28 Court any such Information not directly pertinent to the submission. Any

1 pleadings, motions, briefs, declarations, stipulations, exhibits or other
2 written submissions to the Court in this litigation which contain, reflect,
3 incorporate or refer material designated as “Confidential” or “Highly
4 Confidential” shall be submitted for filing and maintenance under seal in
5 accordance with the provisions of Local Rule 79-5, unless the Parties
6 agree that such materials need not be sealed. The party seeking to file the
7 unredacted “Confidential” or “Highly Confidential” material shall submit
8 an application, along with a proposed order, seeking a Court order
9 permitting the designated Discovery Material to be filed under seal in
10 accordance with the foregoing provisions.

11 (iv) *Hearings.* In the event that a Receiving Party intends to utilize
12 Confidential or Highly Confidential Information during a pre-trial
13 hearing, such Receiving Party shall provide written notice no less than
14 five days prior to the hearing, to the Producing Party and to the Court,
15 except that shorter notice may be provided if the Receiving Party could
16 not reasonably anticipate the need to use the document at the hearing five
17 days in advance, in which event notice shall be given immediately upon
18 identification of that need. The use of such Confidential or Highly
19 Confidential Information during the pre-trial hearing shall be determined
20 by agreement of the parties or by order of the Court.

21 (v) *Trial.* The use of Confidential or Highly Confidential Information during
22 the trial shall be determined by order of the Court.

23 (vi) *Subpoena by Other Courts or Agencies.* If another court or an
24 administrative agency subpoenas or otherwise orders production of
25 Confidential or Highly Confidential Information that any Party or other
26 person has obtained under the terms of this Order, the Party or other
27 person to whom the subpoena or other process is directed must notify the
28 Producing Party in writing within five (5) days of all of the following: (a)

1 the discovery materials that are requested for production in the subpoena;
2 (b) the date by which compliance with the subpoena is requested; (c) the
3 location at which compliance with the subpoena is requested; (d) the
4 identity of the party serving the subpoena; and (e) the case name,
5 jurisdiction and index, docket, complaint, charge, civil action or other
6 identification number or other designation identifying the litigation,
7 administrative proceeding or other proceeding in which the subpoena or
8 other process has been issued. Confidential or Highly Confidential
9 Information shall not be produced prior to the receipt of written notice by
10 the Producing Party and after a reasonable opportunity to object has been
11 offered. Further, the party or person receiving the subpoena or other
12 process will cooperate with the Producing Party in any proceeding related
13 thereto. The Producing Party will bear the burden and all costs of
14 opposing the subpoena on grounds of confidentiality.

15 8. *Return of Discovery Materials.* Within ninety days of the termination of any party
16 from all proceedings in this action, that party, its employees, attorneys, consultants
17 and experts must destroy or return (at the election of the Receiving Party) all
18 originals and/or copies of documents with Confidential Information or Highly
19 Confidential Information, provided however, that the obligation to destroy or
20 return such documents that is imposed on counsel, consultants and experts
21 representing multiple parties shall not occur until the last of their represented
22 parties has been terminated from this action. At the written request of the
23 Producing Party, any person or entity having custody or control of recordings,
24 notes, memoranda, summaries or other written materials, and all copies thereof,
25 related to or containing discovery materials produced by the Producing Party (the
26 “Discovery Materials”) shall deliver to the Producing Party an affidavit certifying
27 that reasonable efforts have been made to assure that all Discovery Materials have
28 been destroyed or delivered to the Producing Party in accordance with the terms of

1 this Protective Order. Notwithstanding the foregoing, counsel for each party may
2 retain court-filed documents and attorney work product materials that refer to or
3 incorporate Confidential Information, and will continue to be bound by this Order
4 with respect to all such retained information. A Receiving Party is permitted to
5 retain a list of the documents by Bates Number that are produced by a Producing
6 Party under this Protective Order.

7 **II. PRIVILEGES.**

8 9. *No Waiver by Disclosure.*

9 (i) This Order is entered, inter alia, pursuant to Rule 502(d) of the Federal
10 Rules of Evidence. If a Producing Party inadvertently discloses
11 information in connection with the pending litigation that the Producing
12 Party thereafter claims to be privileged or protected by the attorney-client
13 privilege or attorney work product protection (“Disclosed Protected
14 Information”), the disclosure of the Disclosed Protected Information shall
15 not constitute or be deemed a waiver or forfeiture of any claim of
16 privilege or work product protection that the Producing Party would
17 otherwise be entitled to assert with respect to the Disclosed Protected
18 Information and its subject matter in this proceeding or in any other
19 federal or state proceeding.

20 (ii) A Producing Party may assert attorney-client privilege or work product
21 protection with respect to Disclosed Protected Information by notifying
22 the Receiving Party in writing. The Receiving Party must return or
23 destroy all copies of the Disclosed Protected Information, and provide a
24 certification of counsel that all of the Disclosed Protected Information
25 has been returned or destroyed within three (3) days of receipt of the
26 Producing Party’s written notice. Within five (5) business days of receipt
27 of the notification that the Disclosed Protected Information has been
28 returned or destroyed, the Producing Party must produce a privilege log

1 with respect to the Disclosed Protected Information.

2 (iii) If the Receiving Party contests the claim of attorney-client privilege or
3 work product protection, it may challenge the Producing Party's claim(s)
4 of privilege or work-product by making a motion to the Court.

5 (iv) Disclosed Protected Information that is sought to be reclaimed by the
6 parties to this case pursuant to this Order shall not be used as grounds by
7 any third party to argue that any waiver of privilege or protection has
8 occurred by virtue of any production in this case.

9 (v) The Producing Party retains the burden of establishing the privileged or
10 protected nature of the Disclosed Protected Information. Nothing in this
11 paragraph shall limit the right of any party to petition the Court for an in
12 camera review of the Disclosed Protected Information.

13 10. *Receiving Party's Obligation.* Nothing in this Order shall relieve counsel for any
14 Receiving Party of any existing duty or obligation, whether established by case
15 law, rule of court, regulation or other source, to return, and not to review, any
16 privileged or work product materials without being requested by the Producing
17 Party to do so. Rather, in the event a Receiving Party becomes aware that it is in
18 possession of what appears to be privileged documents or materials, then counsel
19 for the Receiving Party shall immediately: (i) cease any further review or use of
20 that document or material and (ii) notify the Producing Party of the apparent
21 production of Disclosed Protected Information, requesting whether the documents
22 or materials are Disclosed Protected Information. In the event the Producing Party
23 confirms the documents or material are Disclosed Protected Information, the
24 Receiving Party shall (i) promptly return or destroy all copies of the Disclosed
25 Protected Information in its possession and (ii) take reasonable steps to retrieve all
26 copies of the Disclosed Protected Information distributed to other counsel or non-
27 parties.

1 **III. MISCELLANEOUS.**

2 11. *Violations of the Protective Order by a Receiving Party.* In the event of disclosure
3 of Discovery Material designated CONFIDENTIAL or HIGHLY
4 CONFIDENTIAL to any person not authorized to such access under this Protective
5 Order, the party responsible for having made such disclosure, and each party with
6 knowledge thereof, shall immediately inform counsel for the party whose
7 Discovery Material has been disclosed of all known relevant information
8 concerning the nature and circumstances of the disclosure. The party responsible
9 for improperly disclosing such Discovery Material shall also promptly take all
10 reasonable measures to retrieve the improperly disclosed Discovery Material and
11 to ensure that no further or greater unauthorized disclosure and/or use thereof is
12 made. In the event that any person or party otherwise violates the terms of this
13 Protective Order, the aggrieved Producing Party should apply to the Court to
14 obtain relief against any such person or party violating or threatening to violate any
15 of the terms of this Protective Order. In the event that the aggrieved Producing
16 Party seeks injunctive relief, it must direct the petition for such relief to this Court.
17 The parties and any other person subject to the terms of this Protective Order agree
18 that this Court shall retain jurisdiction over it and them for the purpose of
19 enforcing this Protective Order.

20 12. *Violations of the Protective Order by Disclosure of Personal Information.* In the
21 event that any person or party violates the terms of this Protective Order by
22 disclosing Confidential Personal Information or Highly Confidential Information
23 relating to an individual third party, as defined in Paragraph 2 of this Order, or in
24 the event that any person or party breaches the terms of the Protective Order in a
25 manner that requires disclosure to a third party under pertinent privacy laws or
26 otherwise, it shall be the responsibility of the breaching party to inform the
27 Producing Party of such breach and to contact that third party and to comply with
28 any laws or regulations involving breaches of Personal Information.

1 13. *Protective Order Remains In Force.* This Protective Order shall remain in force
2 and effect until modified, superseded, or terminated by order of the Court made
3 upon reasonable written notice. Unless otherwise ordered, or agreed upon by the
4 parties, this Protective Order shall survive the termination of this action. The Court
5 retains jurisdiction even after termination of this action to enforce this Protective
6 Order and to make such amendments, modifications, deletions and additions to this
7 Protective Order as the Court may from time to time deem appropriate.
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12 SO ORDERED, this 14th day of March 2018.



14 THE HONORABLE DOUGLAS F.
15 MCCORMICK FOR THE CENTRAL
16 DISTRICT OF CALIFORNIA
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1 DATED: March 12, 2018

Respectfully submitted,
KIRKLAND & ELLIS LLP

3 By: /s/ Mark Holscher

4
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11 DATED: March 12, 2018

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14 By: /s/ Antony Buchignani

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22 Local Rule 5-4.3.4 Attestation

23 I attest that Defendant's counsel, Antony Buchignani, concurs in this filing's
24 content and has authorized the filing.

25 DATED: March 12, 2018

By: /s/ Mark Holscher

26 Mark Holscher (SBN 139582)

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4 **UNITED STATES DISTRICT COURT**
5 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

6 G.E.T. ENTERPRISES, LLC., a
7 Delaware Limited Liability Company

8 Plaintiff,

9 v.

10 RICHARD VANDER KAAY &
11 ASSOCIATES, INC., a California
12 Corporation

13 Defendant.

Case No. 8:18-CV-0045-CJC (DFMx)

**APPENDIX A TO JOINT
PROTECTIVE ORDER**

The Hon. Cormac J. Carney

Action Filed: January 12, 2018

Trial Date: None Set

14 RICHARD VANDER KAAY &
15 ASSOCIATES, INC., a California
16 Corporation,

17 Counter-Claimant.

18 v.

19 G.E.T. ENTERPRISES, LLC, a Delaware
20 Limited Liability Company,

21 Counter-Defendant,

22
23 I hereby certify that I have read the Joint Stipulated Protective Order (the
24 “Order”) entered in the above-captioned action and that I understand the terms
25 thereof. I agree to be bound by the Order. If I receive documents or information
26 designated as Confidential or Highly Confidential, as those terms are defined in the
27 Order, I understand that such information is provided to me pursuant to the terms and
28 restrictions of the Order. I agree to hold in confidence and not further disclose or use

1 for any purpose, other than as permitted by the Order, any information disclosed to me
2 pursuant to the terms of the Order. I further agree to submit to the jurisdiction of this
3 Court for purposes of enforcing the Order and agree to accept service of process in
4 connection with this action or any proceedings related to enforcement of the Order by
5 certified letter, return receipt requested, at my principal residence, in lieu of personal
6 service or other methods of service.

7 I understand that these certifications are strictly confidential, that counsel for
8 each party are maintaining the certifications without giving copies to the other side,
9 and that the parties expressly agreed and the Court ordered that except in the event of
10 a violation of this Order, the parties will make no attempt to seek copies of the
11 certifications or to determine the identities of persons signing them. I further
12 understand that if the Court should find that any disclosure is necessary to investigate
13 a violation of this Order, the disclosure will be limited to outside counsel only, and
14 outside counsel shall not disclose any information to their clients that could tend to
15 identify any certification signatory unless and until there is specific evidence that a
16 particular signatory may have violated the Order, in which case limited disclosure
17 may be made with respect to that signatory.

18 _____
19 (signature)

20 _____
21 (print name)

22 Sworn to and subscribed before me this ____ day of
23 _____, 201__.

24 _____
25 Notary Public