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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

12 HARLAND CLARKE CORP.,

13 Plaintiff,

14 v.

15 PACIFIC PREMIER BANK,

16 Defendant.

Case No.: SA CV 20-01175-
DOC(ADSx)

[Discovery Document: Referred to
Magistrate Judge Autumn D. Spaeth].

**STIPULATED PROTECTIVE
ORDER**

BRYAN CAVE LEIGHTON PAISNER LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

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1 **I. PURPOSES AND LIMITATIONS**

2 A. 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
5 may be warranted. Accordingly, the parties hereby stipulate to and petition
6 the 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 that
10 are entitled to confidential treatment under the applicable legal principles.
11 The parties further acknowledge, as set forth in Section XIII(C), below, that
12 this Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that
14 must be followed and the standards that will be applied when a party seeks
15 permission from the Court to file material under seal.
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17 **II. GOOD CAUSE STATEMENT**

18 A. This action is likely to involve private customer information, pricing
19 lists and other valuable commercial, financial and/or proprietary information
20 for which special protection from public disclosure and from use for any
21 purpose other than prosecution of this action is warranted. Such confidential
22 and proprietary materials and information consist of, among other things,
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1 confidential business or financial information, information regarding
2 confidential business practices, or other confidential commercial information
3 (including information implicating privacy rights of third parties), information
4 otherwise generally unavailable to the public, or which may be privileged or
5 otherwise protected from disclosure under state or federal statutes, court rules,
6 case decisions, or common law. Accordingly, to expedite the flow of
7 information, to facilitate the prompt resolution of disputes over confidentiality
8 of discovery materials, to adequately protect information the parties are
9 entitled to keep confidential, to ensure that the parties are permitted
10 reasonable necessary uses of such material in preparation for and in the
11 conduct of trial, to address their handling at the end of the litigation, and serve
12 the ends of justice, a protective order for such information is justified in this
13 matter. It is the intent of the parties that information will not be designated as
14 confidential for tactical reasons and that nothing be so designated without a
15 good faith belief that it has been maintained in a confidential, non-public
16 manner, and there is good cause why it should not be part of the public record
17 of this case.

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24 **III. DEFINITIONS**

- 25 A. Action: This pending federal law suit.
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27 B. Challenging Party: A Party or Non-Party that challenges the
28 designation of information or items under this Order.

1 C. “CONFIDENTIAL” Information or Items: Information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c), and as specified
4 above in the Good Cause Statement.
5

6 D. Counsel: Outside Counsel of Record and House Counsel (as well as
7 their support staff).
8

9 E. Designating Party: A Party or Non-Party that designates information or
10 items that it produces in disclosures or in responses to discovery as
11 “CONFIDENTIAL.”
12

13 F. Disclosure or Discovery Material: All items or information, regardless
14 of the medium or manner in which it is generated, stored, or maintained
15 (including, among other things, testimony, transcripts, and tangible things),
16 that are produced or generated in disclosures or responses to discovery in this
17 matter.
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19 G. Expert: A person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to
21 serve as an expert witness or as a consultant in this Action.
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23 H. House Counsel: Attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other
25 outside counsel.
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I. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

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

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

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

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

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

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

1 **IV. SCOPE**

2 A. The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.
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8 B. Any use of Protected Material at trial shall be governed by the orders of
9 the trial judge. This Order does not govern the use of Protected Material at
10 trial.
11

12 **V. DURATION**

13 A. Even after final disposition of this litigation, the confidentiality
14 obligations imposed by this Order shall remain in effect until a Designating
15 Party agrees otherwise in writing or a court order otherwise directs. Final
16 disposition shall be deemed to be the later of (1) dismissal of all claims and
17 defenses in this Action, with or without prejudice; and (2) final judgment
18 herein after the completion and exhaustion of all appeals, rehearings,
19 remands, trials, or reviews of this Action, including the time limits for filing
20 any motions or applications for extension of time pursuant to applicable law.
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22 **VI. DESIGNATING PROTECTED MATERIAL**

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

24 1. Each Party or Non-Party that designates information or items for
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1 protection under this Order must take care to limit any such designation
2 to specific material that qualifies under the appropriate standards. The
3 Designating Party must designate for protection only those parts of
4 material, documents, items, or oral or written communications that
5 qualify so that other portions of the material, documents, items, or
6 communications for which protection is not warranted are not swept
7 unjustifiably within the ambit of this Order.
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10 2. Mass, indiscriminate, or routinized designations are prohibited.
11 Designations that are shown to be clearly unjustified or that have been
12 made for an improper purpose (e.g., to unnecessarily encumber the case
13 development process or to impose unnecessary expenses and burdens
14 on other parties) may expose the Designating Party to sanctions.
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16 3. If it comes to a Designating Party's attention that information or
17 items that it designated for protection do not qualify for protection, that
18 Designating Party must promptly notify all other Parties that it is
19 withdrawing the inapplicable designation.
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22 **B. Manner and Timing of Designations**
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24 1. Except as otherwise provided in this Order (*see, e.g.*, Section
25 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
26 Discovery Material that qualifies for protection under this Order must
27 be clearly so designated before the material is disclosed or produced.
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2. Designation in conformity with this Order requires the following:
 - a. For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).
 - b. A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page

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that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

c. For testimony given in depositions, that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

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

C. Inadvertent Failure to Designate

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

1 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 A. Timing of Challenges

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4 1. Any party or Non-Party may challenge a designation of
5 confidentiality at any time that is consistent with the Court's
6 Scheduling Order.

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8 B. Meet and Confer

9 1. The Challenging Party shall initiate the dispute resolution
10 process under Local Rule 37.1 et seq.

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

23 A. Basic Principles

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25 1. A Receiving Party may use Protected Material that is disclosed
26 or produced by another Party or by a Non-Party in connection with this
27 Action only for prosecuting, defending, or attempting to settle this
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Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section XIV below.

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

B. Disclosure of “CONFIDENTIAL” Information or Items

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

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

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

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

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(Exhibit A);

d. The Court and its personnel;

e. Court reporters and their staff;

f. Professional jury or trial consultants, mock jurors, and

Professional Vendors to whom disclosure is reasonably

necessary or this Action and who have signed the

“Acknowledgment and Agreement to be Bound” attached as

Exhibit A hereto;

g. The author or recipient of a document containing the

information or a custodian or other person who otherwise

possessed or knew the information;

h. During their depositions, witnesses, and attorneys for

witnesses, in the Action to whom disclosure is reasonably

necessary provided: (i) the deposing party requests that the

witness sign the “Acknowledgment and Agreement to Be

Bound;” and (ii) they will not be permitted to keep any

confidential information unless they sign the “Acknowledgment

and Agreement to Be Bound,” unless otherwise agreed by the

Designating Party or ordered by the Court. Pages of transcribed

deposition testimony or exhibits to depositions that reveal

Protected Material may be separately bound by the court reporter

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and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

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

IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

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

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

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 the
4 Court from which the subpoena or order issued, unless the Party has obtained
5 the Designating Party’s permission. The Designating Party shall bear the
6 burden and expense of seeking protection in that court of its confidential
7 material and nothing in these provisions should be construed as authorizing or
8 encouraging a Receiving Party in this Action to disobey a lawful directive
9 from another court.
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13 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
14 **PRODUCED IN THIS LITIGATION**
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16 A. The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
18 information produced by Non-Parties in connection with this litigation is
19 protected by the remedies and relief provided by this Order. Nothing in these
20 provisions should be construed as prohibiting a Non-Party from seeking
21 additional protections.
22

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24 B. In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the
26 Party is subject to an agreement with the Non-Party not to produce the Non-
27 Party’s confidential information, then the Party shall:
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- 1 1. Promptly notify in writing the Requesting Party and the Non-
- 2 Party that some or all of the information requested is subject to a
- 3 confidentiality agreement with a Non-Party;
- 4
- 5 2. Promptly provide the Non-Party with a copy of the Stipulated
- 6 Protective Order in this Action, the relevant discovery request(s), and a
- 7 reasonably specific description of the information requested; and
- 8
- 9 3. Make the information requested available for inspection by the
- 10 Non-Party, if requested.
- 11

12 C. If the Non-Party fails to seek a protective order from this court within

13 14 days of receiving the notice and accompanying information, the Receiving

14 Party may produce the Non-Party’s confidential information responsive to the

15 discovery request. If the Non-Party timely seeks a protective order, the

16 Receiving Party shall not produce any information in its possession or control

17 that is subject to the confidentiality agreement with the Non-Party before a

18 determination by the court. Absent a court order to the contrary, the Non-

19 Party shall bear the burden and expense of seeking protection in this court of

20 its Protected Material.

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24 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 A. If a Receiving Party learns that, by inadvertence or otherwise, it has

26 disclosed Protected Material to any person or in any circumstance not

27 authorized under this Stipulated Protective Order, the Receiving Party must

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1 immediately (1) notify in writing the Designating Party of the unauthorized
2 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
3 Protected Material, (3) inform the person or persons to whom unauthorized
4 disclosures were made of all the terms of this Order, and (4) request such
5 person or persons to execute the “Acknowledgment and Agreement to be
6 Bound” that is attached hereto as Exhibit A.
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9 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

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

2 A. Right to Further Relief

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

6 B. Right to Assert Other Objections

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

15 C. Filing Protected Material

16
17 1. A Party that seeks to file under seal any Protected Material must
18 comply with Civil Local Rule 79-5. Protected Material may only be
19 filed under seal pursuant to a court order authorizing the sealing of the
20 specific Protected Material at issue. If a Party's request to file
21 Protected Material under seal is denied by the Court, then the
22 Receiving Party may file the information in the public record unless
23
24 otherwise instructed by the Court.
25

26 **XIV. FINAL DISPOSITION**

27 A. After the final disposition of this Action, as defined in Section V,
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1 within sixty (60) days of a written request by the Designating Party, each
2 Receiving Party must return all Protected Material to the Producing Party or
3 destroy such material. As used in this subdivision, “all Protected Material”
4 includes all copies, abstracts, compilations, summaries, and any other format
5 reproducing or capturing any of the Protected Material. Whether the
6 Protected Material is returned or destroyed, the Receiving Party must submit
7 a written certification to the Producing Party (and, if not the same person or
8 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
9 category, where appropriate) all the Protected Material that was returned or
10 destroyed and (2) affirms that the Receiving Party has not retained any copies,
11 abstracts, compilations, summaries or any other format reproducing or
12 capturing any of the Protected Material. Notwithstanding this provision,
13 Counsel are entitled to retain an archival copy of all pleadings, motion papers,
14 trial, deposition, and hearing transcripts, legal memoranda, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and
16 consultant and expert work product, even if such materials contain Protected
17 Material. Any such archival copies that contain or constitute Protected
18 Material remain subject to this Protective Order as set forth in Section V.
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B. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October 13, 2020 Respectfully submitted,

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**

By: /s/ Aaron J. Malo
 Aaron J. Malo
 Attorney for Defendant and Counterclaimant
 Pacific Premier Bank

Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer, Jed P. White, attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: October 13, 2020 Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Jed P. White
 Jed P. White
 Attorneys for Plaintiff/Counter-defendant
 Harland Clarke Corp.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: October 15, 2020

 /s/ Autumn D. Spaeth
HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

1 **EXHIBIT A**
2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of _____
5 _____ [print or type full address], declare under penalty of perjury that I have
6 read in its entirety and understand the Stipulated Protective Order that was issue by
7 the United States District Court for the Central District of California on
8 _____ [DATE] in the case of *Harland Clarke Corp. v. Pacific Premier Bank*,
9 case no. SA CV 20-01175-DOC(ADSx). I agree to comply with and to be bound by
10 all the terms of this Stipulated Protective Order and I understand and acknowledge
11 that failure to so comply could expose me to sanctions and punishment in the nature
12 of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person
14 or entity except in strict compliance with the provisions of this Order.
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16
17 I further agree to submit to the jurisdiction of the United States District Court
18 for the Central District of California for the purpose of enforcing the terms of this
19 Stipulated Protective Order, even if such enforcement proceedings occur after
20 termination of this action. I hereby appoint _____ [print or type
21 full name] of _____ [print or type full address and
22 telephone number] as my California agent for service of process in connection with
23 this action or any proceedings related to enforcement of this Stipulated Protective
24 Order.
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1 Date: _____

2 City and State where sworn and signed: _____
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4 Printed Name: _____

5 Signature: _____
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