

1 John E. Hill, State Bar #45338
2 Enrique Martínez, State Bar #206884
3 LAW OFFICES OF JOHN E. HILL
4 333 Hegenberger Road, Ste. 500
5 Oakland, CA 94621
6 Telephone: (510) 588-1000
7 Facsimile: (510) 632-1445

8 *Attorneys for Plaintiffs & Putative Classes*

9 Howard A. Sagaser, State Bar # 72492
10 William M. Woolman, State Bar #145124
11 Ian B. Wieland, State Bar #285721
12 Sagaser, Watkins & Wieland, PC
13 7550 N Palm Ave., Ste. 100
14 Fresno, CA 93711
15 Telephone: (559) 421-7000
16 Facsimile: (559) 473-1483

17 *Attorneys for Defendants*

18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**
20 **FRESNO DIVISION**

21 FRANCISCO RODRIGUEZ, JESUS
22 HERNANDEZ INFANTE, MARCO GARCIA,
23 JUAN MANUEL BRAVO, ESTELA PATIÑO,
24 JOSE F. OROZCO, and ANTONIO ORTIZ, on
25 behalf of themselves and other members of the
26 general public generally situated,

27 **Plaintiffs,**

28 vs.

DANELL CUSTOM HARVESTING, LLC, a
California Company; RANCE DANELL; ERIC
DANELL; DAVID DANELL; and JUSTIN
DANELL,

Defendants.

Case No.: 1-16-cv-01848-SAB

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use
4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
5 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
6 parties acknowledge that this Order does not confer blanket protections on all disclosures or
7 responses to discovery and that the protection it affords from public disclosure and use extends only
8 to the limited information or items that are entitled to confidential treatment under the applicable
9 legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
10 Stipulated Protective Order does not entitle them to file confidential information under seal; Local
11 Rule 141 sets forth the procedures that must be followed and the standards that will be applied when
12 a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under
18 Federal Rule of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
20 as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among
25 other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

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

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

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

2.9 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.

2.10 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).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 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.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

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

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all

1 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
2 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
3 However, the protections conferred by this Stipulation and Order do not cover the following
4 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
5 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
6 publication not involving a violation of this Order, including becoming part of the public record
7 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
8 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
9 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
10 Protected Material at trial shall be governed by a separate agreement or order.

11 4. DURATION

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

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
20 Non-Party that designates information or items for protection under this Order must take care to
21 limit any such designation to specific material that qualifies under the appropriate standards. The
22 Designating Party must designate for protection only those parts of material, documents, items, or
23 oral or written communications that qualify – so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept unjustifiably within
25 the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
27 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
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1 encumber or retard the case development process or to impose unnecessary expenses and burdens
2 on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated for
4 protection do not qualify for protection that Designating Party must promptly notify all other Parties
5 that it is withdrawing the mistaken designation.

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

10 Designation in conformity with this Order requires:

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

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

4 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
5 the Designating Party identify on the record, before the close of the
6 deposition, hearing, or other proceeding, all protected testimony.

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

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

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
22 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
26 by providing written notice of each designation it is challenging and describing the basis for each
27 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
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1 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
2 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
3 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
4 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
5 Party must explain the basis for its belief that the confidentiality designation was not proper and
6 must give the Designating Party an opportunity to review the designated material, to reconsider the
7 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
8 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
9 has engaged in this meet and confer process first or establishes that the Designating Party is
10 unwilling to participate in the meet and confer process in a timely manner.

11 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
12 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
13 Local Rule 251 within 21 days of the initial notice of challenge or within 14 days of the parties
14 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each
15 such motion must be accompanied by a competent declaration affirming that the movant has
16 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the
17 Designating Party to make such a motion including the required declaration within 21 days shall
18 automatically waive the confidentiality designation for each challenged designation. In addition, the
19 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
20 good cause for doing so, including a challenge to the designation of a deposition transcript or any
21 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
22 competent declaration affirming that the movant has complied with the meet and confer
23 requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
27 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
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1 to retain confidentiality as described above, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party's designation until
3 the court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

- 16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
17 employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this litigation and who have signed
19 the "Acknowledgment and Agreement to Be Bound" that is attached hereto
20 as Exhibit A;
- 21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this litigation
23 and who have signed the "Acknowledgment and Agreement to Be Bound"
24 (Exhibit A);
- 25 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
26 is reasonably necessary for this litigation and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
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- (d) the court and its personnel;
- (e) those present during the trial of this matter, including all pre-trial and motion hearings, and during presentation/argument of this evidence unless the Court orders otherwise;
- (f) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), 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 must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.
- (h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

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:

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

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

3 If the Designating Party timely seeks a protective order, the Party served with the subpoena
4 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
5 before a determination by the court from which the subpoena or order issued, unless the Party has
6 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
7 expense of seeking protection in that court of its confidential material – and nothing in these
8 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
9 disobey a lawful directive from another court.

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

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

17 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
18 Party’s confidential information in its possession, and the Party is subject to an agreement with the
19 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

- 20 (1) promptly notify in writing the Requesting Party and the Non-Party that some
21 or all of the information requested is subject to a confidentiality agreement
22 with a Non-Party;
- 23 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
24 Order in this litigation, the relevant discovery request(s), and a reasonably
25 specific description of the information requested; and
- 26 (3) make the information requested available for inspection by the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court within 14
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1 days of receiving the notice and accompanying information, the Receiving Party may produce the
2 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
3 seeks a protective order, the Receiving Party shall not produce any information in its possession or
4 control that is subject to the confidentiality agreement with the Non-Party before a determination by
5 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
6 seeking protection in this court of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
16 MATERIAL

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

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
27 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 Protective Order
2 no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.

6 12.3 Filing Protected Material. Without written permission from the Designating Party or
7 a court order secured after appropriate notice to all interested persons, a Party may not file in the
8 public record in this action any Protected Material. A Party that seeks to file under seal any
9 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
10 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
11 Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing that the
12 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
13 protection under the law. If a Receiving Party's request to file Protected Material under seal
14 pursuant to Local Rule 141(b) is denied by the court, then the Receiving Party may file the
15 information in the public record pursuant to Local Rule 141(a) unless otherwise instructed by the
16 court.

17 13. FINAL DISPOSITION

18 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving
19 Party must return all Protected Material to the Producing Party or destroy such material. As used in
20 this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,
21 and any other format reproducing or capturing any of the Protected Material. Whether the Protected
22 Material is returned or destroyed, the Receiving Party must submit a written certification to the
23 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
24 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
25 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
26 compilations, summaries or any other format reproducing or capturing any of the Protected
27 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
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1 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
2 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
3 and expert work product, even if such materials contain Protected Material. Any such archival
4 copies that contain or constitute Protected Material remain subject to this Protective Order as set
5 forth in Section 4 (DURATION).

6 14. FILING PROTECTED MATERIAL

7 The parties understand that only a Court Order can seal documents filed with the Court pursuant to
8 a Noticed Motion to Seal. The parties agree to utilize telephonic conferencing procedures to attempt
9 to agree to a Joint or Unopposed Motion to Seal Documents which a party desires to file under seal.
10 The parties agree to cooperate with each other in a good faith attempt to file the Joint or Unopposed
11 Motion to seal Confidential Information. To the extent that filing under seal is not permitted by the
12 Court, no party will file any Confidential Information with the Court without providing at least 5
13 days advance notice to the other parties.

14
15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
16
17

18 Date: May 25, 2017

LAW OFFICES OF JOHN E. HILL

19
20 By: /s/ Enrique Martinez
21 Enrique Martínez
Attorneys for Plaintiffs

22 Date: May 25, 2017

SAGASER, WATKINS & WIELAND, P.C.

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24 By: /s/ William M. Woolman
25 William M. Woolman
Attorneys for Defendants

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ORDER

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

1. The protective order is entered;
2. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141; and
3. The party making a request to file documents under seal shall be required to show good cause for documents attached to a nondispositive motion or compelling reasons for documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

IT IS SO ORDERED.

Dated: May 31, 2017


UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California, Fresno Division, on ____ [date] ____ in the case of *Rodriguez, et al. v. Danell Custom Harvesting, LLC, et al.* as Case No. 1-16-cv-01848-SAB.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

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Signature: _____