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21 RICHARD ROE, RELATORS

22 UNITED STATES DISTRICT COURT
23 EASTERN DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA, and
25 STATE OF CALIFORNIA, ex rel. BRENT
26 BAILEY, EMILY WADE, and RICHARD
27 ROE,

28 Plaintiff,

v.

GATAN, INC., ROPER INDUSTRIES,
INC., and DOES 1 through 100, Inclusive,

Defendants.

Case No. 2:12-CV-0106 MCE CKD

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure

1 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
2 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
3 Order. The parties acknowledge that this Order does not confer blanket protections on all
4 disclosures or responses to discovery and that the protection it affords from public disclosure and use
5 extends only to the limited information or items that are entitled to confidential treatment under the
6 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
7 this Stipulated Protective Order does not entitle them to file confidential information under seal;
8 Local Rules 140, 141, and 141.1 set forth the procedures that must be followed and the standards
9 that will be applied when a party seeks permission from the court to file material under seal.

10 2. DEFINITIONS

11 2.1 Challenging Party: a party or Non-Party that challenges the designation of
12 information or items under this Order.

13 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it
14 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
15 of Civil Procedure 26(c), as well as confidential or sensitive proprietary, business, commercial or
16 personal information, including: invoices, price information, pricing strategies, budgets and other
17 financial records, customer identities, customer lists, documents reflecting business strategies,
18 audits, internal policies and procedures, information related to the design or development of
19 products, proprietary technology related to products, internal compliance materials, private contracts,
20 sales and profit information, payroll or compensation information, personnel records, employee data,
21 employee complaints, employee discipline and internal investigations.

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
23 (as well as their support staff), counsel for the United States, and counsel for the State of California.

24 2.4 Designating Party: a Party or Non-Party that designates information or items
25 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other things,
28

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
5 witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or other
9 legal entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
11 this action but are retained to represent or advise a party to this action and have appeared in this
12 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
13 party.

14 2.10 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
20 organizing, storing, or retrieving data in any form or medium) and their employees and
21 subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated
23 as "CONFIDENTIAL."

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
25 a Producing Party.

26 3. PARTICULARIZED NEED FOR PROTECTION AND NEED FOR A COURT ORDER

27 There is particularized need for protection of all of the categories of
28 "CONFIDENTIAL" information described above. Defendant Gatan, Inc. ("Gatan") is a technology

1 company that develops and sells, among other products, highly complex cameras for use as
2 accessories to electron microscopes. Relators allege that Gatan's products suffered from X-ray
3 safety deficiencies. Therefore, this action is likely to require production of confidential and
4 proprietary information of Gatan, its parent corporation, Roper Industries, Inc. ("Roper"), and
5 Gatan's customers and competitors, the disclosure or use of which could cause severe and
6 irreparable damage to the business of the producing party. This includes invoices, price information,
7 pricing strategies, budgets and other financial records, customer identities, customer lists, documents
8 reflecting business strategies, audits, internal policies and procedures, information related to the
9 design or development of products, proprietary technology related to products, internal compliance
10 materials, private contracts, sales and profit information, and payroll or compensation information.

11 In addition to such proprietary and confidential business information, the Parties
12 expect that the action may involve production of confidential and private personal information of
13 Parties and employees of Parties and Non-Parties, including payroll or compensation information,
14 personnel records, employee data, employee complaints, employee discipline and internal
15 investigations.

16 Given the highly sensitive nature of the information to be protected and the severe
17 harm that could be caused by improper disclosure or use, the parties believe that a private agreement
18 among the parties would be inadequate and a court order protecting such information is necessary.

19 4. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected
21 Material (as defined above), but also (1) any information copied or extracted from Protected
22 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
23 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
24 Material. However, the protections conferred by this Stipulation and Order do not cover the
25 following information: (a) any information that is in the public domain at the time of disclosure to a
26 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
27 result of publication not involving a violation of this Order, including becoming part of the public
28 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the

1 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
2 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
3 Protected Material at trial shall be governed by a separate agreement or order.

4 5. DURATION

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

12 6. DESIGNATING PROTECTED MATERIAL

13 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each
14 Party or Non-Party that designates information or items for protection under this Order must take
15 care to limit any such designation to specific material that qualifies under the appropriate standards.
16 The Designating Party must designate for protection only those parts of material, documents, items,
17 or oral or written communications that qualify – so that other portions of the material, documents,
18 items, or communications for which protection is not warranted are not swept unjustifiably within
19 the ambit of this Order.

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

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

27 6.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

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

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

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

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

27 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
28 to designate qualified information or items does not, standing alone, waive the Designating Party's

1 right to secure protection under this Order for such material. Upon timely correction of a
2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
3 accordance with the provisions of this Order.

4 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
6 of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
8 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
9 confidentiality designation by electing not to mount a challenge promptly after the original
10 designation is disclosed.

11 7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
12 process by providing written notice of each designation it is challenging and describing the basis for
13 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
14 must recite that the challenge to confidentiality is being made in accordance with this specific
15 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith
16 and must begin the process by conferring directly (in voice to voice dialogue; other forms of
17 communication are not sufficient) within 21 days of the date of service of notice. In conferring, the
18 Challenging Party must explain the basis for its belief that the confidentiality designation was not
19 proper and must give the Designating Party an opportunity to review the designated material, to
20 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
21 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only
22 if it has engaged in this meet and confer process first or establishes that the Designating Party is
23 unwilling to participate in the meet and confer process in a timely manner.

24 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality (and in
26 compliance with Local Rule 141, if applicable) within 21 days of the initial notice of challenge or
27 within 21 days of the parties agreeing that the meet and confer process will not resolve their dispute,
28 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming

1 that the movant has complied with the meet and confer requirements imposed in the preceding
2 paragraph. Failure by the Designating Party to make such a motion including the required
3 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
4 designation for each challenged designation. In addition, the Challenging Party may file a motion
5 challenging a confidentiality designation at any time if there is good cause for doing so, including a
6 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought
7 pursuant to this provision must be accompanied by a competent declaration affirming that the
8 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

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

16 8. ACCESS TO AND USE OF PROTECTED MATERIAL

17 8.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this case only for
19 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
20 disclosed only to the categories of persons and under the conditions described in this Order. When
21 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13
22 below (FINAL DISPOSITION).

23 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
25 disclose any information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
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1 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
2 Bound" that is attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
5 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
7 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
8 Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, mock
11 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
12 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
15 (Exhibit A), **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of
16 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
17 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
18 this Stipulated Protective Order;

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

21 (h) counsel for the United States and the State of California, respectively, and
22 such experts and government staff as they elect to show such documents incident to their monitoring
23 this case and/or their participating in any way in this case, pre-intervention or post-intervention, so
24 long as such counsel, experts, or government staff have signed the "Acknowledgment and
25 Agreement to Be Bound (Exhibit A).
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1 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that
5 Party must:

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

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

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

13 If the Designating Party timely seeks a protective order, the Party served with the
14 subpoena or court order shall not produce any information designated in this action as
15 "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued,
16 unless the Party has obtained the Designating Party's permission. The Designating Party shall bear
17 the burden and expense of seeking protection in that court of its confidential material -and nothing in
18 these provisions should be construed as authorizing or encouraging a Receiving Party in this action
19 to disobey a lawful directive from another court.

20 10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
21 LITIGATION

22 (a) The terms of this Order are applicable to information produced by a Non-
23 Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-
24 Parties in connection with this litigation is protected by the remedies and relief provided by this
25 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
26 additional protections,

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

4 1. promptly notify in writing the Requesting Party and the Non-Party that some
5 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

6 2. promptly provide the Non-Party with a copy of the Stipulated Protective
7 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the
8 information requested; and

9 3. make the information requested available for inspection by the Non-Party.

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

17 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
26 MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain inadvertently
28 produced material is subject to a claim of privilege or other protection, the obligations of the

1 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
2 is not intended to modify whatever procedure may be established in an e-discovery order that
3 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
4 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the parties may
6 incorporate their agreement in the stipulated protective order submitted to the court.

7
8 **13. MISCELLANEOUS**

9 **13.1 Right to Further Relief.** Nothing in this Order abridges the right of any person
10 to seek its modification by the court in the future.

11 **13.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
12 Order no Party waives any right it otherwise would have to object to disclosing or producing any
13 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
14 Party waives any right to object on any ground to use in evidence of any of the material covered by
15 this Protective Order.

16 **13.3 Filing Protected Material.** Without written permission from the Designating
17 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
18 in the public record in this action any Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
20 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
21 Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing that the
22 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
23 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
24 to Local Rule 141 is denied by the court, then the Receiving Party may file the information in the
25 public record pursuant to Local Rule 141 unless otherwise instructed by the court.

26 **14. FINAL DISPOSITION**

27 Within 60 days after the final disposition of this action, as defined in paragraph 4,
28 each Receiving Party must return all Protected Material to the Producing Party or destroy such

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

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 Dated: May ___, 2014

LITTLER MENDELSON, P.C.

17 By: _____

18 ERIC C. BELLAFRONTO
19 NICOLAS T. KELSEY
20 Attorneys for Defendants
GATAN, INC. and ROPER INDUSTRIES,
INC.

21 Dated: May ___, 2014

22 _____
23 DANIEL BARTLEY
24 BARTLEY LAW OFFICES
25 ATTORNEY FOR BRENT BAILEY AND
26 EMILY WADE, RELATORS

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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Dated: June 2, 2014

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CAROLYN K. DELANEY
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 that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued by the United
6 States District Court for the Eastern District of California on [date] in the case of *United States of*
7 *America, et al. v. Gatan, Inc.*, Case No. 2:12-CV-0106 MCE CKD. I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is subject to this
11 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
12 this Order.

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

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25 [printed name]

26
27 Signature: _____

28 [signature]