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11 Advanced Building & Fabrication, Inc.

12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA

14 ADVANCED BUILDING & FABRICATION,  
15 INC., a California Corporation, ROBERT  
16 HONAN, an individual,

17 Plaintiffs,

18 vs.

19 CALIFORNIA HIGHWAY PATROL, JOHN  
20 WILSON, an individual, CURTIS J. AYERS,  
21 an individual, and DOES 1 TO 20, inclusive,

22 Defendants.

Case No: 2:13-cv-02380-MCE-CKD

**STIPULATED PROTECTIVE ORDER**

Action filed: Sept. 27, 2013

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1 **STIPULATED PROTECTIVE ORDER**

2 Plaintiffs Advanced Building & Fabrication and Robert Lee Honan (“Plaintiffs”)  
3 and Defendants California Highway Patrol, John Wilson and Curtis J. Ayers  
4 (“Defendants”) have agreed to the provisions of the following Stipulated Protective  
5 Order.

6 **1. PURPOSES AND LIMITATIONS**

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

19 **2. GOOD CAUSE STATEMENT**

20 This action involves confidential financial information for which special protection  
21 from public disclosure and from use for any purpose other than prosecution of this  
22 action is warranted. Such confidential information consist of, among other things,  
23 confidential business or financial information, information used to prepare tax returns,  
24 third-party customer information, information otherwise generally unavailable to the  
25 public, or which may be privileged or otherwise protected from disclosure under state or  
26 federal statutes, court rules, case decisions, or common law. In particular, certain  
27 financial information related to Robert Honan and/or Advanced Building & Fabrication,  
28 Inc. may be disclosed in the course of this litigation. Special protection is necessary for

1 such information to ensure that it is not used for an improper purpose or shared with any  
2 law enforcement, taxation or other governmental authority. Accordingly, to expedite the  
3 flow of information, to facilitate the prompt resolution of disputes over confidentiality of  
4 discovery materials, to adequately protect information the parties are entitled to keep  
5 confidential, to ensure that the parties are permitted reasonable necessary uses of such  
6 material in preparation for and in the conduct of trial, to address their handling at the end  
7 of the litigation, and serve the ends of justice, a protective order for such information is  
8 justified in this matter. It is the intent of the parties that information will not be designated  
9 as confidential for tactical reasons and that nothing be so designated without a good  
10 faith belief that it has been maintained in a confidential, non-public manner, and there is  
11 good cause why it should not be part of the public record of this case.

12 **3. DEFINITIONS**

13 A. Action: shall mean the above-captioned lawsuit, *Advanced Building &*  
14 *Fabrication, et al. v California Highway Patrol, et al.*, Eastern District of California, Case  
15 No. 2:13-cv-02380-MCE-CKD.

16 B. Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order.

18 C. "CONFIDENTIAL" Information or Items: information (regardless of how it is  
19 generated, stored or maintained) or tangible things that qualify for protection under  
20 Federal Rule of Civil Procedure 26(c) and as specified above in the Good Cause  
21 Statement, including, but not limited to, financial information related to Robert Honan  
22 and/or Advanced Building & Fabrication. "Confidential" information as used herein  
23 means any Designated Material that is designated pursuant to this Protective Order as  
24 "Confidential" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" by the Producing Party  
25 or Designating Party, whether it is a document, information contained in a document,  
26 information revealed during a deposition or other testimony, information revealed in an  
27 interrogatory answer or information otherwise revealed.

28

1 D. “CONFIDENTIAL ATTORNEYS’ EYES ONLY” Information or Items:  
2 “Confidential” information (regardless of how it is generated, stored or maintained) as  
3 defined herein, which warrants further protection because it is particularly sensitive such  
4 that a Party’s or Non-Party’s business representatives cannot be afforded review of the  
5 information without creating a substantial risk of serious injury to the Producing Party or  
6 to third parties that could not be avoided by less restrictive means, and such that review  
7 should be relegated only to Outside Counsel of Record and House Counsel. Financial  
8 information related to Robert Honan and/or Advanced Building & Fabrication may qualify  
9 as “CONFIDENTIAL ATTORNEYS’ EYES ONLY” information.

10 E. Counsel: Outside Counsel of Record and House Counsel (as well as their  
11 support staff).

12 F. Designating Party: a Party or Non-Party that designates information or  
13 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”  
14 or “CONFIDENTIAL ATTORNEYS’ EYES ONLY.”

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

19 H. 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 serve as an  
21 expert witness or as a consultant in this Action.

22 I. House Counsel: attorneys who are employees of a party to this Action.  
23 House Counsel does not include Outside Counsel of Record or any other outside  
24 counsel.

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

27 K. Outside Counsel of Record: attorneys who are not employees of a party to  
28 this Action but are retained to represent or advise a party to this Action and have

1 appeared in this Action on behalf of that party or are affiliated with a law firm which has  
2 appeared on behalf of that party, and includes support staff.

3 L. Party: any party to this Action, including all of its officers, directors,  
4 employees, consultants, retained experts, and Outside Counsel of Record (and their  
5 support staffs).

6 M. Producing Party: a Party or Non-Party that produces Disclosure or  
7 Discovery Material in this Action.

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

12 O. Protected Material: any Disclosure or Discovery Material that is designated  
13 as “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY.”

14 P. Receiving Party: a Party that receives Disclosure or Discovery Material  
15 from a Producing Party.

#### 16 **4. SCOPE**

17 The protections conferred by this Stipulation and Order cover not only Protected  
18 Material (as defined above), but also (1) any information copied or extracted from  
19 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
20 Material; and (3) any testimony, conversations, or presentations by Parties or their  
21 Counsel that might reveal Protected Material.

22 Any use of Protected Material at trial shall be governed by the orders of the trial  
23 judge. This Order does not govern the use of Protected Material at trial.

24 This Order shall govern all documents, the information contained therein, and all other  
25 information produced or disclosed during the Action whether revealed in a document,  
26 disclosure, deposition, other testimony, discovery response or otherwise, by any party,  
27 including any non-party, in this Action (the “Producing Party”) to any other party,  
28 including any non-party, (the “Receiving Party”), when the same is designated with the

1 procedures set forth herein. This Order is binding upon the parties to the Action, as well  
2 as their respective attorneys, agents, representatives, officers and employees and  
3 others as set forth in this Order. This Order is also binding on and applies to all  
4 nonparties who either produce or receive documents or information in connection with  
5 this Action.

6 **5. DURATION**

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

14 **6. DESIGNATING PROTECTED MATERIAL**

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

16 Each Party or Non-Party that designates information or items for protection under this  
17 Order must take care to limit any such designation to specific material that qualifies  
18 under the appropriate standards. The Designating Party must designate for protection  
19 only those parts of material, documents, items, or oral or written communications that  
20 qualify so that other portions of the material, documents, items, or communications for  
21 which protection is not warranted are not swept unjustifiably within the ambit of this  
22 Order.

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

28

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

4 B. Manner and Timing of Designations. Except as otherwise provided in this  
5 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that  
6 qualifies for protection under this Order must be clearly so designated before the  
7 material is disclosed or produced.

8 Designation in conformity with this Order requires:

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

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

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1 all persons or entities in all state or federal proceedings, whether or not they were  
2 parties to this Action. The fact of inadvertent production of privileged information or  
3 documents by any producing Party in this Action shall not be used as a basis for arguing  
4 that a claim of privilege or work product has been waived in any other proceeding.  
5 Without limiting the foregoing, the Protective Order shall not affect the Parties' legal  
6 rights to assert privilege claims over documents in any other proceeding. Without  
7 limiting the foregoing, the Protective Order shall not affect the Parties' legal rights to  
8 assert privilege claims over documents in any other proceeding.

9 **7. USE OF CONFIDENTIAL INFORMATION**

10 Information designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS'  
11 EYES ONLY" shall not be used by any person, other than the Producing Party, for any  
12 purpose other than conducting or attempting to resolve this Action, and in no event shall  
13 such information be used for any business, competitive, regulatory, personal, private,  
14 public or other purpose, nor shall such information be shared with any law enforcement,  
15 taxation or other governmental authority.

16 **8. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 A. Timing of Challenges. Any Party or Non-Party may challenge a  
18 designation of confidentiality at any time that is consistent with the Court's Scheduling  
19 Order.

20 B. Meet and Confer. The Challenging Party shall initiate the dispute  
21 resolution process under Local Rule 251 et seq.

22 C. Burden of Persuasion. The burden of persuasion in any such challenge  
23 proceeding shall be on the Designating Party. Frivolous challenges, and those made for  
24 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
25 other parties) may expose the Challenging Party to sanctions. Unless the Designating  
26 Party has waived or withdrawn the confidentiality designation, all parties shall continue  
27 to afford the material in question the level of protection to which it is entitled under the  
28 Producing Party's designation until the Court rules on the challenge.





1 through [11] above, as well as House Counsel of the Receiving Party to whom  
2 disclosure is reasonably necessary for this Action.

3 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
4 **OTHER LITIGATION**

5 If a Party is served with a subpoena or a court order issued in other litigation that  
6 compels disclosure of any information or items designated in this Action as  
7 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY,” that Party must:

- 8 A. Promptly notify in writing the Designating Party. Such notification shall  
9 include a copy of the subpoena or court order;
- 10 B. Promptly notify in writing the party who caused the subpoena or order to  
11 issue in the other litigation that some or all of the material covered by the subpoena or  
12 order is subject to this Protective Order. Such notification shall include a copy of this  
13 Stipulated Protective Order; and
- 14 C. Cooperate with respect to all reasonable procedures sought to be pursued  
15 by the Designating Party whose Protected Material may be affected.

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

24 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
25 **THIS LITIGATION**

- 26 A. The terms of this Order are applicable to information produced by a Non-  
27 Party in this Action and designated as “CONFIDENTIAL” or “CONFIDENTIAL  
28 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection

1 with this litigation is protected by the remedies and relief provided by this Order. Nothing  
2 in these provisions should be construed as prohibiting a Non-Party from seeking  
3 additional protections.

4 B. In the event that a Party is required, by a valid discovery request, to  
5 produce a Non-Party's confidential information in its possession, and the Party is subject  
6 to an agreement with the Non-Party not to produce the Non-Party's confidential  
7 information, then the Party shall:

8 1) promptly notify in writing the Requesting Party and the Non-Party  
9 that some or all of the information requested is subject to a confidentiality agreement  
10 with a Non-Party;

11 2) promptly provide the Non-Party with a copy of the Stipulated  
12 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
13 specific description of the information requested; and

14 3) make the information requested available for inspection by the Non-  
15 Party, if requested.

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

#### 24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
26 Protected Material to any person or in any circumstance not authorized under this  
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
28 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve

1 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
2 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
3 request such person or persons to execute the “Acknowledgment and Agreement to Be  
4 Bound” that is attached hereto as Exhibit A.

5 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain  
8 inadvertently produced material is subject to a claim of privilege or other protection, the  
9 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may  
11 be established in an e-discovery order that provides for production without prior privilege  
12 review. The Parties’ agreement pursuant to Federal Rule of Evidence 502(d) and (e) is  
13 set forth above in Section 6.C.

14 **13. USE OF CONFIDENTIAL INFORMATION AT TRIAL**

15 The rules and procedures governing the use of Confidential Information at trial  
16 shall be determined by the Court at the final pretrial conference.

17 **14. MISCELLANEOUS**

18 A. Right to Further Relief. Nothing in this Order abridges the right of any  
19 person to seek its modification by the Court in the future.

20 B. Right to Assert Other Objections. By stipulating to the entry of this  
21 Protective Order no Party waives any right it otherwise would have to object to  
22 disclosing or producing any information or item on any ground not addressed in this  
23 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground  
24 to use in evidence of any of the material covered by this Protective Order.

25 C. Filing Protected Material. A Party that seeks to file under seal any  
26 Protected Material must comply with Local Rule 141. Protected Material may only be  
27 filed under seal pursuant to a court order authorizing the sealing of the specific  
28 Protected Material at issue. If a Party's request to file Protected Material under seal is

1 denied by the court, then the Receiving Party may file the information in the public  
2 record unless otherwise instructed by the court.

3 **15. PRESERVATION OF RIGHTS AND PRIVILEGES**

4 Nothing contained in this Order shall affect the right, if any, of any party or  
5 witness to make any other type of objection, claim, or other response to discovery  
6 requests, including, without limitation, interrogatories, requests for admissions, requests  
7 for production of documents or questions at a deposition. Nor shall this Order be  
8 construed as a waiver by any party of any legally cognizable privilege to withhold any  
9 Confidential Information other than on the basis that it has been designated  
10 Confidential, or of any right which any Party may have to assert such privilege at any  
11 stage of this litigation. Further, the inadvertent failure to designate any information as  
12 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY” shall not constitute  
13 a waiver of any Party or Non-Party’s claim, either within or outside this Action, that any  
14 such information does contain trade secrets, proprietary information or is otherwise  
15 confidential and not subject to disclosure.

16 **16. RETURN OR DESTRUCTION OF MATERIALS**

17 After the final disposition of this Action, within 60 days of a written request by the  
18 Designating Party, each Receiving Party must return all Protected Material to the  
19 Producing Party or destroy such material. As used in this subdivision, “all Protected  
20 Material” includes all copies, abstracts, compilations, summaries, and any other format  
21 reproducing or capturing any of the Protected Material. Whether the Protected Material  
22 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  
24 60 day deadline that (1) identifies (by category, where appropriate) all the Protected  
25 Material that was returned or destroyed and (2) affirms that the Receiving Party has not  
26 retained any copies, abstracts, compilations, summaries or any other format  
27 reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
28 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,

1 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and  
2 trial exhibits, expert reports, attorney work product, and consultant and expert work  
3 product, even if such materials contain Protected Material. Any such archival copies that  
4 contain or constitute Protected Material remain subject to this Protective Order as set  
5 forth in Section 5 (DURATION).

6 **17. VIOLATIONS OF THIS ORDER**

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

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10  
11 Dated: March \_\_\_\_, 2017 NOSSAMAN LLP

12 By: \_\_\_\_\_

13 Brendan F. Macaulay  
14 *Attorneys for Plaintiffs Robert Honan and*  
15 *Advanced Building & Fabrication, Inc.*

16 Dated: March \_\_\_\_, 2017 WILLIAM L. CUMMINGS  
17 JAMES MCGARRY  
18 MCGARRY & LAUFENBERG

19 By: \_\_\_\_\_

20 William L. Cummings  
21 *Attorneys for John Wilson and*  
22 *the California Highway Patrol*

23 Dated: March \_\_\_\_, 2017 DAN VEROFF  
24 KERR & WAGSTAFFE LLP

25 By: \_\_\_\_\_

26 Dan Veroff  
27 *Attorneys for Defendants Curtis Ayers,*

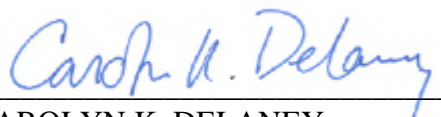
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1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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3 Dated: April 4, 2017

  
\_\_\_\_\_  
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  
5 that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Central District of California  
7 on \_\_\_\_\_ [date] in the case of *Advanced Building & Fabrication, et al. v*  
8 *California Highway Patrol, et al.*, Eastern District of California, Case No. 2:13-cv-02380-  
9 MCE-CKD. I agree to comply with and to be bound by all the terms of this Stipulated  
10 Protective Order and I understand and acknowledge that failure to so comply could  
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
12 that I will not disclose in any manner any information or item that is subject to this  
13 Stipulated Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

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

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

26 Printed name: \_\_\_\_\_

27 Signature: \_\_\_\_\_