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14 UNITED STATES DISTRICT COURT
 15 EASTERN DISTRICT OF CALIFORNIA

16 RICKEY HENRY, an individual, on behalf of
 17 himself, and on behalf of all persons similarly
 18 situated,

19 Plaintiff,

20 vs.

21 CENTRAL FREIGHT LINES, INC., a
 Corporation, and DOES 1 through 50,
 22 Inclusive,

23 Defendants.

Case No. 2:16-cv-00280-JAM-EFB

CLASS ACTION

**STIPULATION FOR PROTECTIVE
 ORDER PURSUANT TO E.D. CAL. CIV.
 L.R. 141.1**

Action Filed: October 20, 2015
 Removed: February 23, 2016

1 Plaintiff Rickey Henry (“Plaintiff”) and Defendant Central Freight Lines, Inc. (“Defendant”)
2 hereby stipulate by and through their respective attorneys of record as follows:

3 **1. PURPOSES AND LIMITATIONS**

4 Disclosure and discovery activity in this action are likely to involve production of
5 confidential, proprietary, or private information for which special protection from public disclosure and
6 from use for any purpose other than prosecuting this litigation may be warranted, including, but not
7 limited to, the following documents and information: the financial payroll records of putative members
8 of the class/subclasses that Plaintiff seeks to represent; contact information for putative members of the
9 class/subclasses that Plaintiff seeks to represent; records that identify and/or reference the healthcare
10 patients that Defendant; and the employment policies, procedures and/or practices of Defendant. Each
11 the above-referenced documents identified above require protection from public access and/or disclosure
12 because they either implicate the financial privacy, privacy and/or patient privacy concerns of third-
13 parties, or relate to confidential business and/or proprietary documents and/or information that
14 Defendant does not publicly disseminate, respectively. The parties hereby stipulate that a court order
15 rather than a private agreement is necessary because the parties intend to use, disseminate, and/or
16 disclose such documents and/or information in the context of the parties’ litigation, and request that the
17 Court, subject to its approval, enter the parties’ Stipulation and [Proposed] Protective Order (“Stipulated
18 Protective Order”). Accordingly, the parties hereby stipulate to and petition the court to enter the
19 following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
20 protections on all disclosures or responses to discovery and that the protection it affords from public
21 disclosure and use extends only to the limited information or items that are entitled to confidential
22 treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section
23 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information
24 under seal; Eastern District of California Civil Local Rule 141 (“Local Rule 141”) sets forth the
25 procedures that must be followed and the standards that will be applied when a party seeks permission
26 from the court to file material under seal.

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1 **2. DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
6 Procedure 26(c), and specifically, the following documents and/or information: the financial payroll
7 records of putative members of the class/subclasses that Plaintiff seeks to represent; contact information
8 for putative members of the class/subclasses that Plaintiff seeks to represent; records that identify and/or
9 reference the healthcare patients that Defendant services; and the employment policies, procedures
10 and/or practices of Defendant.

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
12 well as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or items that
14 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

15 2.5 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 other things,
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to
18 discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent
20 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
21 consultant in this action.

22 2.7 House Counsel: attorneys who are employees of a party to this action. House
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.8 Non-Party: any natural person, partnership, corporation, association, or other
25 legal entity not named as a Party to this action.

26 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
27 action but are retained to represent or advise a party to this action and have appeared in this action on
28 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

1 2.10 Party: any party to this action, including all of its officers, directors, employees,
2 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

3 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
4 Material in this action.

5 2.12 Professional Vendors: persons or entities that provide litigation support services
6 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
7 storing, or retrieving data in any form or medium) and their employees and subcontractors.

8 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
9 “CONFIDENTIAL – Subject to Protective Order – Henry v. Central Freight Lines, Inc., Case No. 2:16-
10 cv-00280-JAM-EFB (E.D. Cal.)” or substantially identical wording.

11 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
12 Producing Party.

13 **3. SCOPE**

14 The protections conferred by this Stipulated Protective Order cover not only Protected Material
15 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
16 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
17 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
18 However, the protections conferred by this Stipulation and Order do not cover the following
19 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
20 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
21 publication not involving a violation of this Order, including becoming part of the public record through
22 trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
23 obtained by the Receiving Party after the disclosure from a source who obtained the information
24 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
25 Material at trial shall be governed by a separate agreement or order.

26 **4. DURATION**

27 Even after final disposition of this litigation, the confidentiality obligations imposed by this
28 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order

1 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
2 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits
4 for filing any motions or applications for extension of time pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
7 or Non-Party that designates information or items for protection under this Order must take care to limit
8 any such designation to specific material that qualifies under the appropriate standards. The Designating
9 Party must designate for protection only those parts of material, documents, items, or oral or written
10 communications that qualify – so that other portions of the material, documents, items, or
11 communications for which protection is not warranted are not swept unjustifiably within the ambit of
12 this Order.

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
21 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
22 Discovery Material that qualifies for protection under this Order must be clearly so designated before
23 the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper documents, but excluding
26 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
27 “CONFIDENTIAL– Subject to Protective Order – Henry v. Central Freight Lines, Inc., Case No. 2:16-
28 cv-00280-JAM-EFB (E.D. Cal.)” or substantially identical wording to each page that contains protected

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

4 A Party or Non-Party that makes original documents or materials available for inspection need
5 not designate them for protection until after the inspecting Party has indicated which material it would
6 like copied and produced. During the inspection and before the designation, all of the material made
7 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified
8 the documents it wants copied and produced, the Producing Party must determine which documents, or
9 portions thereof, qualify for protection under this Order. Then, before producing the specified
10 documents, the Producing Party must affix the “CONFIDENTIAL – Subject to Protective Order –
11 Henry v. Central Freight Lines, Inc., Case No. 2:16-cv-00280-JAM-EFB (E.D. Cal.)” legend or
12 substantially identical wording to each page that contains Protected Material. If only a portion or
13 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify
14 the protected portion(s) (e.g., by making appropriate markings in the margins).

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

18 (c) for information produced in some form other than documentary and for any other
19 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
20 containers in which the information or item is stored the legend “CONFIDENTIAL – Subject to
21 Protective Order – Henry v. Central Freight Lines, Inc., Case No. 2:16-cv-00280-JAM-EFB (E.D.
22 Cal.)” or substantially identical wording. If only a portion or portions of the information or item warrant
23 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the Designating Party’s right to
26 secure protection under this Order for such material. Upon timely correction of a designation, the
27 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
28 the provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or
5 a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the original designation
7 is disclosed.

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

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
22 intervention, the Challenging Party may file and serve a motion challenging a confidentiality designation
23 under Eastern District of California Civil Local Rule 251 (and in compliance with Local Rule 141, if
24 applicable), including a challenge to the designation of a deposition transcript or any portions thereof.
25 The Designating Party may also file a motion to retain confidentiality for each challenged designation.
26 Any motion brought pursuant to this provision must be accompanied by a competent declaration
27 affirming that the movant has complied with the meet and confer requirements imposed by the
28 preceding paragraph.

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

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
19 any information or item designated “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
21 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
22 information for this litigation;

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

25 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
26 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to
27 Be Bound” (Exhibit A);

28 (d) the court and its personnel;

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

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

9 (g) the author or recipient of a document containing the information or a custodian or
10 other person who otherwise possessed or knew the information.

11 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
12 **LITIGATION**

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

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

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

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

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

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3 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
4 **THIS LITIGATION**

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

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

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

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

17 (3) make the information requested available for inspection by the Non-Party.

18 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
19 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
20 Party’s confidential information responsive to the discovery request at this time. The Receiving
21 Party and other Parties to this litigation agree to confer about and take reasonable measures to extend
22 the deadline to respond to such discovery during this 14-day period, to allow the Non-Party to take
23 action. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement with the Non-
25 Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall
26 bear the burden and expense of seeking protection in this court of its Protected Material.

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1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
10 **MATERIAL**

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

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
21 seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
23 Order no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party
25 waives any right to object on any ground to use in evidence of any of the material covered by this
26 Protective Order.

27 12.3 Filing Protected Material. Without written permission from the Designating Party
28 or a court order secured after appropriate notice to all interested persons, a Party may not file in the

1 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
2 Material must comply with Local Rule 141. Protected Material may only be filed under seal pursuant to
3 a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Local Rule
4 141, a sealing order will issue only upon a request establishing that the Protected Material at issue is
5 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
6 Party's request to file Protected Material under seal pursuant to Local Rule 141 is denied by the court,
7 then the Receiving Party may file the information in the public record pursuant to Local Rule 141 unless
8 otherwise instructed by the court.

9 **13. FINAL DISPOSITION**

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

24 **IT IS SO STIPULATED.**
25 [Signatures on next page]

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DATED: April 25, 2018

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Aparajit Bhowmik

Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Jeffrey S. Herman
Attorneys for Plaintiff

DATED: April 25, 2018

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: /s / Tim L. Johnson

Spencer C. Skeen
Tim L. Johnson
Jesse C. Ferrantella
Attorneys for Defendant
CENTRAL FREIGHT LINES, INC.

IT IS SO ORDERED.

Dated: May 16, 2018.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND CONSENT TO BE BOUND**

3 I, _____, declare:

4 1. My address is _____. My present
5 occupation is _____.

6 2. I have received a copy of the **STIPULATION FOR PROTECTIVE ORDER**
7 **REGARDING THE CONFIDENTIALITY OF DOCUMENTS & INFORMATION** and
8 **PROTECTIVE ORDER RE PRODUCTION OF CONFIDENTIAL DOCUMENTS &**
9 **INFORMATION** (collectively, the “Protective Order”) in this action entitled *Rickey Henry v. Central*
10 *Freight Lines, Inc.*, Case No. 2:16-cv-00280-JAM-EFB in the United States District Court for the
11 Eastern District of California. I have carefully read the provisions of the Protective Order, and I
12 understand those provisions.

13 3. I will comply with all of the provisions of the Protective Order. I will hold in confidence
14 and will not copy or use except for purposes of this action any information designated as “Confidential”
15 that I receive or view in this action.

16 4. I further irrevocably consent to the jurisdiction of the United States District Court for the
17 Eastern District of California, for the limited purposes of any proceeding to enforce or to secure
18 compliance with the terms of the Protective Order or to punish the breach of any terms of the Protective
19 Order.

20 I declare under penalty of perjury under the laws of the State of California and the United States
21 that the foregoing is true and correct.

22 Executed this _____ day of _____, 20__.

23 _____
24 Signature

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27 33853306.1