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 11 VIC FIRTH COMPANY

12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA

15 GERALD A. FORREST, an individual doing
 business as GOSPELCHOPS,
 16
 Plaintiffs,
 17
 v.
 18 VIC FIRTH COMPANY, a Massachusetts
 corporation,
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 Defendant.
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Case No. 2:16-cv-02981-KJM-EFB
 Hon. Kimberly J. Mueller
**STIPULATED PROTECTIVE
 ORDER GOVERNING THE
 CONFIDENTIALITY OF
 DISCOVERY**

21 **STIPULATED PROTECTIVE ORDER**
 22 **GOVERNING THE CONFIDENTIALITY OF DISCOVERY**

23 WHEREAS, the Court has before it a proposed stipulation by the parties to the above-
 24 captioned action for entry of a protective order governing, inter alia, the confidentiality of
 25 discovery produced by the parties in this action;

1 WHEREAS, the Court finds that the documents and testimony subject to proposed
2 stipulation could be sought for improper purpose such as gaining unfair business advantage and
3 the public does not already have general access to the information contained in these documents.

4 **NOW THEREFORE**, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and
5 the stipulation and agreement of the parties, IT IS HEREBY ORDERED that:

6 1. This Order shall govern all discovery materials produced or disclosed
7 during this action, including without limitation the following: documents; data and information;
8 electronic or computerized data compilations; answers to interrogatories; answers to deposition
9 questions; responses to requests for admission; affidavits; and all other discovery taken pursuant
10 to the Federal Rules of Civil Procedure and Local Civil Rules for the United States District Court
11 for the Eastern District of California from the Parties and non-Parties. The term “Party” shall
12 include the following: the named parties to this litigation and all directors, officers, employees,
13 agents or representatives of the parties.

14 2. Material designated for protection under this Order (“Protected Material”) shall be
15 categorized by the producing Party into one of the following classifications:

16 (a) CONFIDENTIAL; or (b) HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S
17 EYES ONLY. The CONFIDENTIAL designation shall be appropriately applied to any non-
18 public document or information that the designating Party determines, reasonably and in good
19 faith, to constitute confidential, proprietary, or otherwise sensitive information that the
20 designating Party reasonably believes should not be disclosed to the public. The HIGHLY
21 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY designation shall only be used for
22 non-public information that the designating Party determines, reasonably and in good faith, to
23 constitute highly sensitive technical or business information, including but not limited to trade
24 secrets, business models or plans, existing or potential customer lists or information, marketing
25 plans, market assessments, sensitive agreements with third parties, internal financial statements,
26 sales and profit information and related data (with the exception of gross revenues and sales,
27 including gross revenues attributable to sales of specific products relevant to this action), non-
28 public agreements, or information whose disclosure is subject to any obligation of prior
disclosure to any non-party to this lawsuit, and/or information or documents that relate to
products of any Party under development, and that the designating Party reasonably believes
should not be disclosed to the public or to a Party because such disclosure could create a

1 substantial risk of serious harm. The scope of this Order shall be understood to encompass not
2 only those items or things that are expressly designated as Protected Material, but also any
3 information derived there from and all copies, photographs, excerpts, and summaries thereof, as
4 well as testimony and oral conversation derived there from or related thereto.

5 3. To designate and categorize information contained in discovery material that is
6 produced in written form as HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES
7 ONLY Protected Material, the producing Party or non-party shall stamp “Highly Confidential –
8 Outside Counsel’s Eyes Only” on each page of such discovery material, including a Production
9 number on each page to identify that the Protected Material has been so marked for purposes of
10 this action only. The designation and classification of information as HIGHLY
11 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY will be deemed effective to bring
12 that information under the protections of this Order unless and until the Court orders otherwise, as
13 provided in Paragraph 10 of this Order.

14 4. Protected Material designated and categorized as HIGHLY CONFIDENTIAL–
15 OUTSIDE COUNSEL’S EYES ONLY pursuant to Paragraph 3 above may be disclosed only to
16 the following persons, except upon the prior written consent of the designating Party or as
17 otherwise expressly provided in this Order:

18 (a) Counsel of record in this action, who are attorneys with the following law firms:
19 (i) Nixon Peabody LLP and (ii) Cohorn Law;

20 (b) Authorized secretarial, clerical, legal assistant, paralegals, or staff of counsel of
21 record for the Parties who are necessary to assist in the conduct of this action, and outside
22 contractors hired to copy, index, sort, or otherwise manage the storage and retrieval of discovery
23 materials;

24 (c) Bona fide litigation consultants, whether testifying or not, and experts, whether
25 testifying or not, and any other person that does not fall within subparagraphs 4(a)-(b) above
26 requested by counsel to give testimony, or otherwise to assist in trial preparations in this action, to
27 the extent necessary for the conduct of this action, but only if those persons are not a Party to this
28 action and are not officers, directors or employees of a Party to this action, of a competitor of a
Party to this action or of any affiliates of either. Before any disclosure is made pursuant to this
paragraph, counsel for the Party designating the information as HIGHLY CONFIDENTIAL –
OUTSIDE COUNSEL’S EYES ONLY shall be given no less than five (5) business days prior to

1 the proposed disclosure, a notice of intent to disclose, which notice shall contain the name, title,
2 and business address of the person to whom the information will be disclosed. If counsel for the
3 designating Party objects to the proposed disclosure after receipt of the notice but prior to the
4 proposed disclosure date, then no disclosure of Protected Material shall be made to the proposed
5 recipient. Any objection to the proposed disclosure must include a complete statement as to the
6 basis for the objection in sufficient detail to enable the Court to determine whether such objection
7 is justified pursuant to the restrictions of subparagraph 4(c) and, if the parties do not otherwise
8 resolve the dispute, the Party requesting disclosure may seek the Court's assistance to resolve the
9 issue. If the designating Party consents to such disclosure at any time, the 5-day period is waived.
10 See Paragraph 8 with respect to required execution of the CONFIDENTIALITY
UNDERTAKING attached hereto as Exhibit 1 prior to disclosure;

11 (d) Any witness during the course of depositions in this action or oral or written
12 examinations, provided such witness is first advised of and agrees on the record to the terms and
13 conditions of this Order, and provided further that any such person's name appears on the
14 Protected Material as a person who has previously seen or received the Protected Material, or it is
15 otherwise established through other documents or the testimony of that witness or other witnesses
16 at deposition that the witness has previously seen or received the Protected Material or knows the
17 information contained within it, and provided that such document or information is not left in the
18 possession of the deponent. See Paragraph 8 with respect to required execution of the
CONFIDENTIALITY UNDERTAKING attached hereto as Exhibit 1 prior to disclosure;

19 (e) Any court reporters and videographers who record and/or transcribe deposition or
20 other testimony in this action. See Paragraph 8 with respect to required execution of the
CONFIDENTIALITY UNDERTAKING attached hereto as Exhibit 1 prior to disclosure;

21 (f) The Court and its staff and any Special Master appointed by the Court and his/her
22 staff; and any person whom the Court has appointed or the parties have agreed will serve as
23 mediator in this lawsuit, provided that the mediator shall execute the CONFIDENTIALITY
24 UNDERTAKING prior to disclosure and destroy all documents, things or information marked
25 "Highly Confidential – Outside Counsel's Eyes Only" within ten (10) days after the conclusion of
26 such person's involvement in the mediation and shall not use such information for any purpose
27 other than in connection with the mediation. See Paragraph 8 with respect to required execution

1 of the CONFIDENTIALITY UNDERTAKING attached hereto as Exhibit 1 prior to disclosure;
2 and

3 (g) Any other person by Order of the Court or the Special Master after an application
4 and a showing by the Party seeking to make disclosure that such proposed disclosure will not
5 raise a risk of material harm to the designating Party, and will not be used to the technical,
6 marketing, financial, commercial or other competitive advantage of the receiving Party. See
7 Paragraph 8 with respect to required execution of the CONFIDENTIALITY UNDERTAKING
8 attached hereto as Exhibit 1 prior to disclosure.

9 Information or documents designated HIGHLY CONFIDENTIAL– OUTSIDE
10 COUNSEL’S EYES ONLY shall not be disclosed to others, including any officers, directors,
11 employees, including in-house counsel, or members of any Party to this action, except as
12 provided in this paragraph.

13 5. To designate and categorize information contained in discovery material that is
14 produced in written form as CONFIDENTIAL Protected Material, the producing Party or non-
15 party shall stamp “Confidential” on each page of such discovery material, including a production
16 number on each page to identify that the Protected Material has been so marked for purposes of
17 this action only. The designation and classification of information as CONFIDENTIAL will be
18 deemed effective to bring that information under the protections of this Order unless and until the
19 Court orders otherwise, as provided in Paragraph 10 of this Order.

20 6. Protected Material designated and categorized as CONFIDENTIAL pursuant to
21 Paragraph 5 above may be disclosed to the following persons, except upon the prior written
22 consent of the designating Party or as otherwise expressly provided in this Order:

23 (a) All of the persons identified in Paragraphs 4(a)-(g) above, subject to the
24 required execution of the CONFIDENTIALITY UNDERTAKING attached hereto as Exhibit 1
25 prior to disclosure;

26 (b) Any named Party to the litigation, including any present or former officer, director,
27 or employee thereof, including in-house counsel, to whom it is necessary that the designated
28 material be shown for the purposes of the litigation; and

(c) Any other person as to whom the parties first agree in writing, which agreement
will not be unreasonably withheld. See Paragraph 8 with respect to required execution of the
CONFIDENTIALITY UNDERTAKING attached hereto as Exhibit 1 prior to disclosure.

1 7. Counsel for a producing Party may mask (“redact”) material deemed exempt from
2 discovery because of the attorney-client privilege or work product immunity afforded by Fed. R.
3 Civ. P. 26(b), and may thus produce documents for inspection either in a redacted or unredacted
4 form. However, any document from which material is redacted must identify in the redacted area
5 that a redaction has occurred. The reason for any such redacting must be stated either on the
6 document itself or on a log provided to the receiving Party. In the event of any dispute as to the
7 propriety of the redaction, the Party objecting to the redaction may submit the issue to the Court
8 for review and determination, but the Party making the redaction shall retain the burden of
9 showing that the redaction was proper.

10 8. No disclosure of Protected Material shall be made pursuant to Subparagraphs 4(c),
11 4(d), 4(e), ~~4(f)~~, 4(g), 6(a), and 6(c) unless and until the person to whom the information is to be
12 disclosed shall be advised of and shall agree to the terms and conditions of this Order by signing a
13 “CONFIDENTIALITY UNDERTAKING” in the form attached hereto as Exhibit 1 and shall
14 agree to maintain the information in a separate and identifiable file, access to which is
15 appropriately restricted.

16 9. All Parties or non-parties seeking to file with the Court any discovery materials
17 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S
18 EYES ONLY shall file, with the Judge appointed to this action, the appropriate motion to seal or
19 redact in accordance with Local Civil Rules 140, 141 and 141.1 for the United States District
20 Court for the Eastern District of California or other order by the Court. Only those portions of the
21 filing with the Court constituting Protected Material shall be subject to the motion to seal. This
22 paragraph shall not be construed to limit or prohibit the right of a Party to challenge a designation
23 of Protected Material, as provided in Paragraph 10 of this Order.

24 If a Party plans to make a filing that includes material an opposing Party has identified as
25 confidential and potentially subject to sealing, the filing Party shall provide the opposing Party,
26 when possible, with at least ten (10) days-notice in advance of filing to allow for the seeking of an
27 order of sealing or redaction from the court. In no event shall the filing Party provide the
28 opposing Party with fewer than five (5) calendar days-notice in advance of filing.

 10. A Party shall not be obligated to challenge the propriety of a designation under this
Order at the time made, and the failure to do so shall not preclude a subsequent challenge thereto.
If at any time a Party objects to a designation of information, in whole or in part, as

1 CONFIDENTIAL material or HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES
2 ONLY material under this Order because such Party believes in good faith that such information:
3 (1) was improperly designated; and (2) is relevant to the claim or defense of any Party, the
4 objecting Party shall notify the designating Party in writing of its request to have the designation
5 modified or withdrawn. The notice shall identify the information in question, and shall specify
6 the reason or reasons for the objection in sufficient detail to enable the Court to determine
7 whether such objection is justified. Within five (5) business days of the receipt of such notice, the
8 designating Party shall respond in writing by: (1) withdrawing the designation; (2) setting forth
9 the reasons why the designating Party believes the information is entitled to the designated status
10 in sufficient detail to enable the Court to determine whether such reasons are justified; or (3)
11 modifying the designation and setting forth the reasons why the designating Party believes the
12 information is entitled to the modified designation in sufficient detail to enable the Court to
13 determine whether such reasons are justified. At that time, the designating Party may present the
14 dispute to the Court by filing a motion for an order regarding the challenged designation. The
15 ultimate burden of showing that the designation is proper shall remain with the designating Party.
16 The status of the information shall be maintained as originally designated until the Court makes a
17 final ruling on the application.

18 11. Should a receiving Party need to disclose CONFIDENTIAL material or HIGHLY
19 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY material beyond the terms of this
20 Order, counsel of record for the receiving Party will inform the designating Party of the
21 documents or materials to be disclosed, the person or persons to whom disclosure is to be made,
22 the extent of the disclosure required, and the basis for such disclosure. No such disclosure will be
23 made unless and until approval is obtained from the designating Party. This Order contemplates
24 reasonable cooperation between the Parties with respect to any request for disclosure; approval
25 will not be withheld without reasonable basis. In the event that the Parties cannot resolve a
26 dispute regarding disclosure of CONFIDENTIAL material or HIGHLY CONFIDENTIAL –
27 OUTSIDE COUNSEL’S EYES ONLY, either Party may apply for a ruling from the Court on the
28 continued status of the information. The ultimate burden of showing that the designation is
proper shall remain with the designating Party.

12. Each individual who receives any CONFIDENTIAL material or HIGHLY
CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY material in accordance with any

1 provision of this Order hereby agrees to subject himself/herself to the jurisdiction of the Court for
2 the purpose of any proceedings relating to the performance under, compliance with, or violation
3 of, this Order.

4 13. The recipient of any CONFIDENTIAL material or HIGHLY CONFIDENTIAL –
5 OUTSIDE COUNSEL’S EYES ONLY material that is provided under this Order shall maintain
6 such information in a secure and safe area, shall take all necessary and appropriate measures to
7 ensure the continued confidentiality of such material, and shall exercise at least the same standard
8 of due and proper care with respect to the storage, custody, use, and/or dissemination of such
9 information as is exercised by the recipient with respect to its own proprietary and highly
10 confidential or competitively sensitive information.

11 14. Notwithstanding any other provisions of this Order, nothing herein shall prohibit
12 counsel for a Party from disclosing a document containing information designated
13 CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY to
14 any natural person whom the document clearly identifies as an author, addressee, or carbon copy
15 recipient of such document. During deposition, hearing, or trial testimony, counsel may disclose
16 documents produced by a Party to current employees and officers of the producing Party.
17 Regardless of any designation pursuant to this Order, if a document or testimony makes reference
18 to the actual or alleged conduct or statements of a person who is a potential witness, counsel may
19 discuss such conduct or statements with such witness without revealing any portion of the
20 document or testimony other than that which specifically refers to such conduct or statement, and
21 such discussion shall not constitute disclosure in violation of this Order.

22 15. Testimony or other material disclosed or to be disclosed at any deposition
23 occurring in this litigation may be designated and categorized under Paragraphs 3 and 5 by any
24 Party or non-Party by making such a designation in writing, by page and line reference, where
25 applicable, to all other Parties or their counsel, within twenty (20) calendar days after receipt of
26 the transcript of such deposition, or within such shorter period as the parties agree. Any such
27 designation must be made pursuant to the standards set forth in Paragraph 2 of this Order. Unless
28 otherwise agreed to in writing by the designating Party, all deposition transcripts shall be treated
in a manner consistent with a designation of HIGHLY CONFIDENTIAL – OUTSIDE
COUNSEL’S EYES ONLY material made under Paragraph 3 until expiration of the time for any
Party or non-Party to make any such confidentiality designations.

1 16. In the event that any question is asked at a deposition with respect to which a Party
2 asserts that the answer requires the disclosure of Protected Material, such question shall
3 nonetheless be answered by the witness fully and completely. Prior to answering, however, all
4 persons present – other than those who already have agreed to the Order or who are persons
5 covered by Paragraphs 4 and 6 of this Order – shall be advised of and shall agree to the terms and
6 conditions of the Order and, at the request of the designating Party, all persons, other than the
7 witness and the witness’ counsel, who are not allowed to obtain such information pursuant to this
8 Order shall leave the room during the time in which this information is disclosed or discussed.

9 17. All Protected Material produced in this action shall only be used in connection
10 with the preparation, trial, and appeal, if any, of this action and shall not be used for any other
11 purpose or used or disclosed to any other person or entity unless otherwise agreed to beforehand
12 in writing by the producing Party or if the Court so orders; however, this requirement shall not
13 prejudice any Party’s right to seek or oppose an order from the Court permitting the use in other
14 litigation of discovery material.

15 18. Nothing in this Order shall prohibit the transmission or communications of
16 information designated CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE
17 COUNSEL’S EYES ONLY between or among those afforded access to it pursuant to this Order:
18 (a) via hand-delivery; (b) via face-to-face conference; (c) in sealed envelopes or containers via the
19 mail or an established freight, delivery, or messenger service; or (d) by e-mail, telephone,
20 telegram, facsimile, or other electronic transmission system.

21 19. To the extent that documents are made available to a Party prior to the entry of this
22 Order, any knowledge learned during the review process will be treated by the receiving Party as
23 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY material until such time as
24 this Order is entered by the Court, at which time any stamped or affixed designation will control.
25 To the extent that documents are reviewed by a Party during the course of settlement or
26 compromise discussions, such documents are to be produced or protected from disclosure in
27 accordance with Fed. R. Evid. 408. No document that is otherwise discoverable or admissible as
28 evidence shall be rendered immune from discovery or disclosure, or rendered inadmissible, solely
by virtue of being reviewed during the course of settlement or compromise discussions.

 20. The inadvertent production of any documents or other discovery materials
governed by this Order shall be without prejudice to, or any waiver of, any claim by the

1 producing Party, or producing non-Party, that any such document or other discovery materials, or
2 information contained in such document or other discovery materials, is confidential, privileged,
3 protected from discovery as work product, or otherwise protected from disclosure; and no Party
4 or non-Party shall be held to have waived any of its rights under Fed. R. Civ. P. 26 by such
5 inadvertent production.

6 21. If a Party determines that it has inadvertently produced documents or materials
7 that are subject to a claim of privilege or work product, or otherwise protected from disclosure,
8 the producing Party shall inform the receiving Party of the inadvertent production in writing, and
9 the receiving Party shall take reasonable steps to ensure that all known copies of any such
10 documents are returned promptly to the producing Party. After the return of the documents, the
11 receiving Party may contest the producing Party's claim(s) of privilege, work product, or other
12 immunity from disclosure pursuant to Paragraph 10 of this Order. That determination shall be
13 made without regard to the fact that any such document has been produced.

14 22. If a Party determines that it has inadvertently failed to designate documents or
15 materials as CONFIDENTIAL material or HIGHLY CONFIDENTIAL– OUTSIDE
16 COUNSEL'S EYES ONLY material, it may do so by giving written notice to all Parties or their
17 counsel of the new designation as being either CONFIDENTIAL material or HIGHLY
18 CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY material. All persons who are in
19 possession of such after-production designated or re-designated materials and who are not within
20 a category of persons who may possess such materials pursuant to Paragraphs 4 and 6 hereof
21 shall, to the extent practicable, promptly return all known copies of any such documents to the
22 producing Party or to a person who is within a category of persons who may possess such
23 materials. Such after-production designated or re-designated materials shall be treated pursuant
24 to the provisions of this Order as having been designated prior to production. After the return of
25 the documents, the re-designation may be challenged pursuant to Paragraph 10, which challenge
26 shall be made without regard to the fact that any such document has been re-designated or
27 produced without first being designated.

28 24. Any document or other information designated as CONFIDENTIAL material or
HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY material pursuant to this
Order that is or becomes widely available as a matter of public record, or is otherwise
intentionally disclosed to the public at large by the designating Party, shall not be considered to

1 be Protected Material thereafter. If a Party believes that Protected Material has become “widely
2 available as a matter of public record,” it may challenge the designation, as provided in Paragraph
3 10 of this Order.

4 25. Nothing contained in this Order shall preclude a Party producing Protected
5 Material from disclosing or using its own Protected Material in any manner it sees fit, or from
6 revealing such Protected Material to whomever it chooses, without the prior consent of any other
7 Party or of this Court.

8 26. This Order pertains only to Protected Material provided by the Party producing it
9 and does not limit the use or disclosure of materials which have been obtained by any Party from
10 any other source lawfully possessing such information and not in violation of any obligation of
11 confidentiality with respect thereto.

12 27. Within sixty (60) calendar days after the final termination of this action, including
13 any appeals, all Parties and non-Parties shall, unless the Parties otherwise agree in writing, return
14 all Protected Material, and all copies thereof, to the Party or non-Party that produced it, or shall
15 destroy all Protected Material, all copies thereof, and all Parties who possessed such Protected
16 Material shall certify, to the best of their knowledge after reasonable inquiry, the return or
17 destruction by affidavit or signed letter furnished to the producing Party. Notwithstanding the
18 foregoing, each Party shall be permitted to retain one copy of documents filed with the Court or
19 served in this proceeding, including correspondence with opposing counsel, one copy of each trial
20 and deposition transcript, and one copy of each trial and deposition exhibit, and any notes,
21 communications, or others materials constituting attorney work product that may contain or refer
22 to Protected Material, which copies shall remain subject to the terms of this Order.

23 28. If a Party in possession of Protected Material obtained from another Party or non-
24 Party receives a subpoena or other form of compulsory process from a non-party to this action
25 seeking production or other disclosure of such information, it shall immediately give written
26 notice to the Party that designated the material, specifying the information sought and enclosing a
27 copy of the subpoena or other form of compulsory process. Where possible, such notice shall be
28 given to the designating Party at least ten (10) calendar days prior to production or disclosure. In
no event shall production or disclosure be made before five (5) calendar days after giving such
notice to the designating Party.

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Respectfully submitted,

Nixon Peabody LLP

DATED: July 10, 2017

By: /s/ Aldo E. Ibarra
Robert A. Weikert
Gina McCreadie
Aldo E. Ibarra
Attorneys for Defendant
VIC FIRTH COMPANY

Cohorn Law

DATED: July 10, 2017

By: /s/ Cari A. Cohorn
Cari A. Cohorn
Attorney for Plaintiff
GERALD A. FORREST dba GOSPELCHOPS

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 12, 2017.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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CONFIDENTIALITY UNDERTAKING

I, _____, hereby acknowledge that:

(i) I have read the Protective Order entered in the action presently pending in the U.S. District Court for the Eastern District of California captioned GERALD A. FORREST v. VIC FIRTH COMPANY, Case No. 2:16-cv-02981-KJM-EFB;

(ii) I understand the terms of the Protective Order;

(iii) I agree, upon threat of penalty of contempt and other civil remedies, to be bound by its terms; and

(iv) I irrevocably submit my person to the jurisdiction of the U.S. District Court for the Eastern District of California for the limited purpose of securing compliance with the terms and conditions of the Protective Order.

DATED: _____

Signature

Name

Present Employer

Title/Occupation

Street Address

City State ZIP

Telephone Number