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14  
15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**

17  
18 KIMBERLY BOHNERT,  
Plaintiff,

19 v.

20 THE ARCHDIOCESE OF SAN  
FRANCISCO; JUNIPERO SERRA HIGH  
21 SCHOOL; THE ROMAN CATHOLIC  
ARCHBISHOP OF SAN FRANCISCO; THE  
22 ARCHDIOCESE OF SAN FRANCISCO  
PARISH AND SCHOOL JURIDIC  
23 PERSONS REAL PROPERTY SUPPORT  
CORPORATION; THE ARCHDIOCESE OF  
24 SAN FRANCISCO PARISH, SCHOOL AND  
CEMETERY JURIDIC PERSONS CAPITAL  
25 ASSETS SUPPORT CORPORATION; and  
26 DOES 1 through 25,  
27 Defendants.

Case No. 14-02854-WHO

**STIPULATED PROTECTIVE ORDER RE  
CONFIDENTIAL DOCUMENTS**

1           1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
5 Disclosure and discovery may involve information relating to minors and current and former  
6 students. Accordingly, the parties hereby stipulate to and petition the court to enter the following  
7 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
8 protections on all disclosures or responses to discovery and that the protection it affords from  
9 public disclosure and use extends only to the limited information or items that are entitled to  
10 confidential treatment under the applicable legal principles. The parties further acknowledge, as  
11 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
13 followed and the standards that will be applied when a party seeks permission from the court to  
14 file material under seal.

15           2.     DEFINITIONS

16           2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order.

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

21           2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
22 (as well as their support staff).

23           2.4 Designating Party: a Party or Non-Party that designates information or items  
24 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

1           2.6 Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
3 witness or as a consultant in this action.

4           2.7 House Counsel: attorneys who are employees of a party to this action. House  
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6           2.8 Non-Party: any natural person, partnership, corporation, association, or other  
7 legal entity not named as a Party to this action.

8           2.9 Outside Counsel of Record: attorneys who are not employees of a party to  
9 this action but are retained to represent or advise a party to this action and have appeared in this  
10 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
11 that party.

12           2.10 Party: any party to this action, including all of its officers, directors,  
13 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
14 staffs).

15           2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
16 Discovery Material in this action.

17           2.12 Professional Vendors: persons or entities that provide litigation support  
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
19 organizing, storing, or retrieving data in any form or medium) and their employees and  
20 subcontractors.

21           2.13 Protected Material: any Disclosure or Discovery Material that is designated  
22 as “CONFIDENTIAL.”

23           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
24 from a Producing Party.

25           3.    SCOPE

26           The protections conferred by this Stipulation and Order cover not only Protected  
27 Material (as defined above), but also (1) any information copied or extracted from Protected  
28 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any

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

13 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

13 Designation in conformity with this Order requires:

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

20 A Party or Non-Party that makes original documents or materials available for  
21 inspection need not designate them for protection until after the inspecting Party has indicated  
22 which material it would like copied and produced. During the inspection and before the  
23 designation, all of the material made available for inspection shall be deemed  
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and  
25 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
26 protection under this Order. Then, before producing the specified documents, the Producing  
27 Party must affix the "CONFIDENTIAL" legend to each page that contains Protected Material. If  
28 only a portion or portions of the material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
2 margins).

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

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

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
12 to designate qualified information or items does not, standing alone, waive the Designating  
13 Party’s right to secure protection under this Order for such material. Upon timely correction of a  
14 designation, the Receiving Party must make reasonable efforts to assure that the material is  
15 treated in accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
18 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
20 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
22 original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
24 process by providing written notice of each designation it is challenging and describing the basis  
25 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
26 notice must recite that the challenge to confidentiality is being made in accordance with this  
27 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
28 good faith and must begin the process by conferring directly (in voice to voice dialogue; other

1 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
2 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
3 designation was not proper and must give the Designating Party an opportunity to review the  
4 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
5 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
6 stage of the challenge process only if it has engaged in this meet and confer process first or  
7 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
8 a timely manner.

9           6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
10 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
11 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
12 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
13 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
14 accompanied by a competent declaration affirming that the movant has complied with the meet  
15 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
16 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
17 shall automatically waive the confidentiality designation for each challenged designation. In  
18 addition, the Challenging Party may file a motion challenging a confidentiality designation at  
19 any time if there is good cause for doing so, including a challenge to the designation of a  
20 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must  
21 be accompanied by a competent declaration affirming that the movant has complied with the  
22 meet and confer requirements imposed by the preceding paragraph.

23           The burden of persuasion in any such challenge proceeding shall be on the  
24 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
25 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
26 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing  
27 to file a motion to retain confidentiality as described above, all parties shall continue to afford  
28

1 the material in question the level of protection to which it is entitled under the Producing Party's  
2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
6 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
7 disclosed only to the categories of persons and under the conditions described in this Order.

8 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
9 section 13 below (FINAL DISPOSITION).

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

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

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

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

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

26 (d) the court and its personnel;

27  
28



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

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

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

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

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

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
26 court order shall not produce any information designated in this action as “CONFIDENTIAL”  
27 before a determination by the court from which the subpoena or order issued, unless the Party  
28 has obtained the Designating Party’s permission. The Designating Party shall bear the burden

1 and expense of seeking protection in that court of its confidential material – and nothing in these  
2 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
3 disobey a lawful directive from another court.

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

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

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

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

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

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

22 (c) If the Non-Party fails to object or seek a protective order from this court  
23 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
24 produce the Non-Party’s confidential information responsive to the discovery request. If the  
25 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
26 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
27  
28

1 before a determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall  
2 bear the burden and expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
12 PROTECTED MATERIAL

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

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
24 person to seek its modification by the court in the future.

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27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of  
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its  
confidentiality interests in this court.

1           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order, no Party waives any right it otherwise would have to object to disclosing or  
3 producing any information or item on any ground not addressed in this Stipulated Protective  
4 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
5 the material covered by this Protective Order.

6           12.3 Filing Protected Material. Without written permission from the Designating  
7 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
8 file in the public record in this action any Protected Material. A Party that seeks to file under seal  
9 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
10 filed under seal pursuant to a court order authorizing the sealing of the specific Protected  
11 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a  
12 request establishing that the Protected Material at issue is privileged, protectable as a trade  
13 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file  
14 Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then  
15 the Receiving Party may file the information in the public record pursuant to Civil Local Rule  
16 79-5(e) unless otherwise instructed by the court.

17           13.    FINAL DISPOSITION

18           Within 60 days after the final disposition of this action, as defined in paragraph 4,  
19 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
20 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
21 compilations, summaries, and any other format reproducing or capturing any of the Protected  
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
23 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
24 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
25 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
26 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

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

5  
6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7  
8 Dated: September 17, 2014

KOCHAN & STEPHENSON

9  
10  
11 By \_\_\_\_\_  
12 Deborah Kochan  
13 Attorneys for Plaintiff

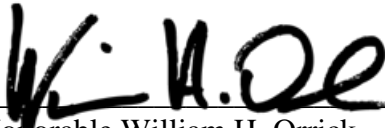
14 Dated: September 17, 2014

LITTLER MENDELSON, P.C.

15  
16 By \_\_\_\_\_  
17 George J. Tichy, II  
18 Michelle R. Barrett  
19 Lisa Lin Garcia  
20 Attorneys for Defendants

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22  
23 Dated: October 3, 2014

24   
\_\_\_\_\_

Honorable William H. Orrick  
United States District Court Judge

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 have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for  
6 the Northern District of California on \_\_\_\_\_, 2014 in the case of *KIMBERLY BOHNERT*  
7 *v. THE ARCHDIOCESE OF SAN FRANCISCO, et al.*, United States District Court, Northern  
8 District of California, Case Number Case No. 3:14-cv-02854 WHO. I agree to comply with and  
9 to be bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and punishment in the  
11 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
12 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
13 compliance with the provisions of this Order.

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

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

21  
22 Date: \_\_\_\_\_

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

24 Printed name: \_\_\_\_\_  
25 [printed name]

26 Signature: \_\_\_\_\_  
27 [signature]