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10 Attorneys for Defendant
 11 HOME DEPOT U.S.A., INC.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 JOHN UTNE, on behalf of himself,
 15 all others similarly situated,

16 Plaintiff,

17 vs.

18 HOME DEPOT U.S.A., INC., a
 19 Delaware corporation; and DOES 1-
 20 50, inclusive,

21 Defendants.

Case No. 16-cv-01854-RS

[Assigned to Hon. Richard Seeborg]

STIPULATION REGARDING
 CONFIDENTIAL DISCOVERY
 MATERIAL AND ~~PROPOSED~~
 ORDER

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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
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not
7 confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable legal
10 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
11 Stipulated Protective Order does not entitle them to file confidential information under
12 seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from the
14 court to 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
19 it is generated, stored or maintained) or tangible things that qualify for protection under
20 Federal Rule of Civil Procedure 26(c), as well as confidential, private or personal
21 information regarding current or former Home Depot employees, confidential
22 commercial or proprietary information, trade secrets, or any other confidential protected
23 information under state or federal law.

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House
25 Counsel (as well as their support staff).

1 2.4 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.5 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including, among
6 other things, testimony, transcripts, and tangible things), that are produced or generated
7 in disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
10 expert witness or as a consultant in this action.

11 2.7 House Counsel: attorneys who are employees of a party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.8 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
17 this action but are retained to represent or advise a party to this action and have
18 appeared in this action on behalf of that party or are affiliated with a law firm which has
19 appeared on behalf of that party.

20 2.10 Party: any party to this action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this action.

25 2.12 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
2 their employees and subcontractors.

3 2.13 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
6 from a Producing Party.

7 3. SCOPE

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

22 4. DURATION

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

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under this
6 Order must take care to limit any such designation to specific material that qualifies
7 under the appropriate standards. The Designating Party must designate for protection
8 only those parts of material, documents, items, or oral or written communications that
9 qualify – so that other portions of the material, documents, items, or communications
10 for which protection is not warranted are not swept unjustifiably within the ambit of this
11 Order. If it comes to a Designating Party’s attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this
15 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
16 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
17 must be clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents,
20 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
21 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
22 protected material.

23 A Party or Non-Party that makes original documents or materials available for
24 inspection need not designate them for protection until after the inspecting Party has
25 indicated which material it would like copied and produced. During the inspection and
26 before the designation, all of the material made available for inspection shall be deemed
27 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
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1 copied and produced, the Producing Party must determine which documents qualify for
2 protection under this Order. Then, before producing the specified documents, the
3 Producing Party must affix the “CONFIDENTIAL” legend to each page that contains
4 Protected Material.

5 (b) for testimony given in deposition, that the Designating Party identify
6 portions of the testimony as to which protection is sought within 30 days of receipt of
7 the transcript. Only those portions of the testimony that are appropriately designated for
8 protection shall be covered by the provisions of this Stipulated Protective Order. For
9 testimony in other pretrial or trial proceedings, parties shall meet and confer and
10 propose reasonable procedures for use of Protected Material.

11 Transcripts containing Protected Material shall have an obvious legend on the
12 title page that the transcript contains Protected Material, and the title page shall be
13 followed by a list of all pages (including line numbers as appropriate) that have been
14 designated as Protected Material and the level of protection being asserted by the
15 Designating Party. The Designating Party shall inform the court reporter of these
16 requirements. Any transcript that is prepared before the expiration of a 30 day period
17 for designation shall be treated during that period as if it had been designated
18 “CONFIDENTIAL” in its entirety unless otherwise agreed. After the expiration of that
19 period, the transcript shall be treated only as actually designated.

20 (c) for information produced in some form other than documentary and for any
21 other tangible items, that the Producing Party affix in a prominent place on the exterior
22 of the container or containers in which the information or item is stored the legend
23 “CONFIDENTIAL.”

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

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
26 court intervention, the Designating Party shall file and serve a motion to retain
27 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5
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1 and General Order 62, if applicable) within 21 days of the initial notice of challenge or
2 within 14 days of the parties agreeing that the meet and confer process will not resolve
3 their dispute, whichever is earlier. Each such motion must be accompanied by a
4 competent declaration affirming that the movant has complied with the meet and confer
5 requirements imposed in the preceding paragraph. Failure by the Designating Party to
6 make such a motion including the required declaration within 21 days (or 14 days, if
7 applicable) shall automatically waive the confidentiality designation for each challenged
8 designation. In addition, the Challenging Party may file a motion challenging a
9 confidentiality designation at any time if there is good cause for doing so, including a
10 challenge to the designation of a deposition transcript or any portions thereof. Any
11 motion brought pursuant to this provision must be accompanied by a competent
12 declaration affirming that the movant has complied with the meet and confer
13 requirements imposed by the preceding paragraph.

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

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this case
25 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
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1 described in this Order. When the litigation has been terminated, a Receiving Party
2 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
8 may disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as
10 well as employees of said Outside Counsel of Record to whom it is reasonably
11 necessary to disclose the information for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
15 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

19 (d) the court and its personnel;

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

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

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

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
6 OTHER LITIGATION

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

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

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

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

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

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

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

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

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

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

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

20 (c) If the Non-Party fails to object or seek a protective order from this
21 court within 14 days of receiving the notice and accompanying information, the
22 Receiving Party may produce the Non-Party’s confidential information responsive to
23 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
24 Party shall not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
27 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
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
5 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the Protected Material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
8 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
9 that is attached hereto as Exhibit A.

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

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

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Stipulated Protective Order no Party waives any right it otherwise would have to object
27 to disclosing or producing any information or item on any ground not addressed in this
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1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Stipulated Protective
3 Order. Nothing in this Stipulated Protective Order will be deemed to be a limit on or
4 waiver of the attorney-client privilege, work product privilege, or any other relevant
5 privilege.

6 12.3 Filing Protected Material. Without written permission from the
7 Designating Party or a court order secured after appropriate notice to all interested
8 persons, a Party may not file in the public record in this action any Protected Material.
9 A Party that seeks to file under seal any Protected Material must comply with Civil
10 Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal
11 pursuant to a court order authorizing the sealing of the specific Protected Material at
12 issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will
13 issue only upon a request establishing that the Protected Material at issue is privileged,
14 protectable as a trade secret, or otherwise entitled to protection under the law. If a
15 Receiving Party's request to file Protected Material under seal pursuant to Civil Local
16 Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party may
17 file the information in the public record pursuant to Civil Local Rule 79-5(e) unless
18 otherwise instructed by the court.

19 12.4 Additional Parties to Lawsuit. If other Parties are added to this
20 action, no Protected Material previously exchanged, produced, or used herein will be
21 disclosed to such other Parties or their Counsel except upon their agreeing to be bound
22 by the provisions of this Stipulated Protective Order.

23 13. FINAL DISPOSITION. Within 60 days after the final disposition of this
24 action, as defined in paragraph 4, each Receiving Party must return all Protected
25 Material to the Producing Party or destroy such material. As used in this subdivision,
26 "all Protected Material" includes all copies, abstracts, compilations, summaries, and any
27 other format reproducing or capturing any of the Protected Material. Whether the
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1 Protected Material is returned or destroyed, the Receiving Party must submit a written
2 certification to the Producing Party (and, if not the same person or entity, to the
3 Designating Party) by the 60-day deadline that (1) identifies (by category, where
4 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
5 that the Receiving Party has not retained any copies, abstracts, compilations, summaries
6 or any other format reproducing or capturing any of the Protected Material.

7 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
9 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
10 consultant and expert work product, even if such materials contain Protected Material.
11 Any such archival copies that contain or constitute Protected Material remain subject to
12 this Protective Order as set forth in Section 4 (DURATION).

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14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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16 Dated: May 1, 2017

/s/ Thomas Segal
THOMAS SEGAL
SETAREH LAW GROUP
9454 Wilshire Boulevard, Suite 907
Beverly Hills, CA 90212
Telephone: (310) 888-7771
Facsimile: (310) 888-0109

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22 Dated: May 1, 2017

/s/ Liz K. Bertko
LIZ K. BERTKO (SBN 268128)
AKIN GUMP STRAUSS HAUER & FELD LLP
580 California Street, Suite 1500
San Francisco, CA 94104
Telephone: (415) 765-9500
Facsimile: (415) 765-9501

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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3 Dated: 5/3/17

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Judge Richard Seeborg
United States District Judge

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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2 I, _____ [print or type full name], of
3 _____ [print or type full address], declare under
4 penalty of perjury that I have read in its entirety and understand the Stipulated
5 Protective Order that was issued by the United States District Court for the
6 Northern District of California on [date] in the case of *Utne v. Home Depot USA,*
7 *Inc.*, Civil Action No. 16-cv-01854-RS. I agree to comply with and to be bound by
8 all the terms of this Stipulated Protective Order and I understand and acknowledge
9 that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to this Stipulated Protective Order to any person
12 or entity except in strict compliance with the provisions of this Order.

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

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

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7 Dated: _____, 20____

8 City and Date where sworn and signed: _____

9 Printed name: _____
10 [printed name]

11 Signature: _____
12 [signature]

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San Francisco, California 94104. On May 1, 2017, I served the foregoing document(s) described as: **STIPULATION REGARDING CONFIDENTIAL DISCOVERY MATERIAL AND [PROPOSED] ORDER**, on the interested party(ies) below, using the following means:

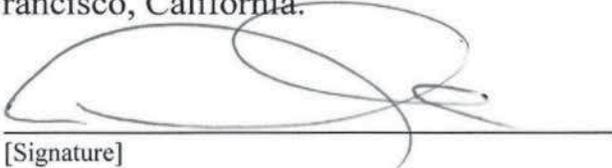
All parties identified for Notice of Electronic Filing generated by the Court's CM/ECF system under the referenced case caption and number

BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 1, 2017, at San Francisco, California.

Jeremias V. Cordero
[Print Name of Person Executing Proof]


[Signature]