

1 ROBERT R. POWELL, SBN 159747
 2 SARAH E. MARINHO, SBN 293690
 3 LAW OFFICES OF ROBERT R. POWELL
 4 925 West Hedding Street
 5 San Jose, California 95126
 6 T: (408) 553-0200
 7 F: (408) 553-0203
 8 E: rpowell@rrpassociates.com

Attorney for Plaintiffs

9 Nancy K. Delaney, State Bar #70617
 10 Nicholas R. Kloeppe, State Bar #186165
 11 MITCHELL, BRISSE, DELANEY & VRIEZE
 12 814 Seventh Street
 13 P.O. Drawer 1008
 14 Eureka, CA 95502
 15 Telephone: (707) 443-5643
 16 Facsimile: (707) 444-9586
 17 Email: ndelaney@mitchelllawfirm.com

Attorney for Defendants

18 *COUNTY OF MENDOCINO, JANNEE DALE,*
 19 *LISA ALLISON, ROBIN BUXTON, BUFFEY*
 20 *WRIGHT, JENNIFER SOOKNE, MIMI CABRAL*
 21 *and SUSAN ROGERS*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

17	LINDA MORALES, individually, and as)	Case No.: 16-CV-02429-EMC
18	Guardian Ad Litem for K.B., and)	
19	RUDOLFO MORALES,)	STIPULATED PROTECTIVE ORDER
20	Plaintiffs,)	FOR STANDARD LITIGATION
21	vs.)	
22	COUNTY OF MENDOCINO, JANNEE)	
23	DALE, LISA ALLISON, ROBIN)	
24	BUXTON, BUFFEY WRIGHT,)	
25	JENNIFER SOOKNE, MIMI CABRAL,)	
26	SUSAN ROGERS, VW [minor], and)	
	DOES 1-10, inclusive,)	
	Defendants.)	

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to discovery
8 and that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles.
11

12 The parties further acknowledge, as set forth in Section 12.3, below, that this
13 Stipulated Protective Order does not entitle them to file confidential information under
14 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
15 standards that will be applied when a party seeks permission from the court to file
16 material under seal.
17

18 2. DEFINITIONS

19 2.1 Challenging Party: a Party or Non-Party that challenges the designation
20 of information or items under this Order.
21

22 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for protection
24 under Federal Rule of Civil Procedure 26(c).
25

26 2.3 Counsel (without qualifier): Outside Counsel of Record and House

1 Counsel (as well as their support staff).

2 2.4 Designating Party: a Party or Non-Party that designates information or
3 items that it produces in disclosures or in responses to discovery as
4 “CONFIDENTIAL.”
5

6 2.5 Disclosure or Discovery Material: all items or information, regardless of
7 the medium or manner in which it is generated, stored, or maintained (including,
8 among other things, testimony, transcripts, and tangible things), that are produced or
9 generated in disclosures or responses to discovery in this matter.
10

11 2.6 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
13 expert witness or as a consultant in this action.

14 2.7 House Counsel: attorneys who are employees of a party to this action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.
17

18 2.8 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.9 Outside Counsel of Record: attorneys who are not employees of a party
21 to this action but are retained to represent or advise a party to this action and have
22 appeared in this action on behalf of that party or are affiliated with a law firm which
23 has appeared on behalf of that party.
24

25 2.10 Party: any party to this action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their

1 support staffs).

2 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this action.

4 2.12 Professional Vendors: persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
7 their employees and subcontractors.

8 2.13 Protected Material: any Disclosure or Discovery Material that is
9 designated as “CONFIDENTIAL.”

10 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
11 from a Producing Party.

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only
14 Protected Material (as defined above), but also (1) any information copied or extracted
15 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
16 Protected Material; and (3) any testimony, conversations, or presentations by Parties or
17 their Counsel that might reveal Protected Material. However, the protections conferred
18 by this Stipulation and Order do not cover the following information: (a) any
19 information that is in the public domain at the time of disclosure to a Receiving Party
20 or becomes part of the public domain after its disclosure to a Receiving Party as a
21 result of publication not involving a violation of this Order, including becoming part of
22 the public record through trial or otherwise; and (b) any information known to the
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1 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
2 disclosure from a source who obtained the information lawfully and under no
3 obligation of confidentiality to the Designating Party. Any use of Protected Material at
4 trial shall be governed by a separate agreement or order.
5

6 4. DURATION

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

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under this
18 Order must take care to limit any such designation to specific material that qualifies
19 under the appropriate standards. The Designating Party must designate for protection
20 only those parts of material, documents, items, or oral or written communications that
21 qualify – so that other portions of the material, documents, items, or communications
22 for which protection is not warranted are not swept unjustifiably within the ambit of
23 this Order.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber or retard the case development process or to
4 impose unnecessary expenses and burdens on other parties) expose the Designating
5 Party to sanctions.
6

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection that Designating Party must
9 promptly notify all other Parties that it is withdrawing the mistaken designation.
10

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
13 or ordered, Disclosure or Discovery Material that qualifies for protection under this
14 Order must be clearly so designated before the material is disclosed or produced.
15

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
20 page that contains protected material. If only a portion or portions of the material on a
21 page qualifies for protection, the Producing Party also must clearly identify the
22 protected portion(s) (e.g., by making appropriate markings in the margins).
23

24 A Party or Non-Party that makes original documents or materials available for
25 inspection need not designate them for protection until after the inspecting Party has
26 indicated which material it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be
2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
3 it wants copied and produced, the Producing Party must determine which documents,
4 or portions thereof, qualify for protection under this Order. Then, before producing the
5 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to
6 each page that contains Protected Material. If only a portion or portions of the material
7 on a page qualifies for protection, the Producing Party also must clearly identify the
8 protected portion(s) (e.g., by making appropriate markings in the margins).

9
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11 (b) for testimony given in deposition or in other pretrial or trial
12 proceedings, that the Designating Party identify on the record, before the close of the
13 deposition, hearing, or other proceeding, all protected testimony.

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

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22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive the
24 Designating Party’s right to secure protection under this Order for such material. Upon
25 timely correction of a designation, the Receiving Party must make reasonable efforts
26 to assure that the material is treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a Designating
4 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
5 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
6 litigation, a Party does not waive its right to challenge a confidentiality designation by
7 electing not to mount a challenge promptly after the original designation is disclosed.
8

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process by providing written notice of each designation it is challenging and
11 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
12 has been made, the written notice must recite that the challenge to confidentiality is
13 being made in accordance with this specific paragraph of the Protective Order. The
14 parties shall attempt to resolve each challenge in good faith and must begin the process
15 by conferring directly (in voice to voice dialogue; other forms of communication are
16 not sufficient) within 14 days of the date of service of notice. In conferring, the
17 Challenging Party must explain the basis for its belief that the confidentiality
18 designation was not proper and must give the Designating Party an opportunity to
19 review the designated material, to reconsider the circumstances, and, if no change in
20 designation is offered, to explain the basis for the chosen designation. A Challenging
21 Party may proceed to the next stage of the challenge process only if it has engaged in
22 this meet and confer process first or establishes that the Designating Party is unwilling
23 to participate in the meet and confer process in a timely manner.
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1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
2 court intervention, the Designating Party shall file and serve a motion to retain
3 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
4 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
5 the parties agreeing that the meet and confer process will not resolve their dispute,
6 whichever is earlier. Each such motion must be accompanied by a competent
7 declaration affirming that the movant has complied with the meet and confer
8 requirements imposed in the preceding paragraph. Failure by the Designating Party to
9 make such a motion including the required declaration within 21 days (or 14 days, if
10 applicable) shall automatically waive the confidentiality designation for each
11 challenged designation. In addition, the Challenging Party may file a motion
12 challenging a confidentiality designation at any time if there is good cause for doing
13 so, including a challenge to the designation of a deposition transcript or any portions
14 thereof. Any motion brought pursuant to this provision must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and
16 confer requirements imposed by the preceding paragraph.

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

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this case
7 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
8 Material may be disclosed only to the categories of persons and under the conditions
9 described in this Order. When the litigation has been terminated, a Receiving Party
10 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

15
16 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
17 ordered by the court or permitted in writing by the Designating Party, a Receiving
18 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

23
24 (b) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
26 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

4 (d) the court and its personnel;

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

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

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

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20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
21 OTHER LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that compels disclosure of any information or items designated in this action as
24 “CONFIDENTIAL,” that Party must:
25

26 (a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order
3 to issue in the other litigation that some or all of the material covered by the subpoena
4 or order is subject to this Protective Order. Such notification shall include a copy of
5 this Stipulated Protective Order; and
6

7 (c) cooperate with respect to all reasonable procedures sought to be pursued
8 by the Designating Party whose Protected Material may be affected.
9

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

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

21 (a) The terms of this Order are applicable to information produced by a
22 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the remedies
24 and relief provided by this Order. Nothing in these provisions should be construed as
25 prohibiting a Non-Party from seeking additional protections.
26

(b) In the event that a Party is required, by a valid discovery request, to

1 produce a Non-Party's confidential information in its possession, and the Party is
2 subject to an agreement with the Non-Party not to produce the Non-Party's
3 confidential information, then the Party shall:

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

7 (2) promptly provide the Non-Party with a copy of the Stipulated
8 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
9 specific description of the information requested; and
10

11 (3) make the information requested available for inspection by the Non-
12 Party.
13

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

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

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
3 retrieve all unauthorized copies of the Protected Material, (c) inform the person or
4 persons to whom unauthorized disclosures were made of all the terms of this Order,
5 and (d) request such person or persons to execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.
7

8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

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

22 12. MISCELLANEOUS
23

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the court in the future.
26

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
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.
6

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

23 Within 60 days after the final disposition of this action, as defined in paragraph
24 4, each Receiving Party must return all Protected Material to the Producing Party or
25 destroy such material. As used in this subdivision, “all Protected Material” includes all
26 copies, abstracts, compilations, summaries, and any other format reproducing or

1 capturing any of the Protected Material. Whether the Protected Material is returned or
2 destroyed, the Receiving Party must submit a written certification to the Producing
3 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
4 deadline that (1) identifies (by category, where appropriate) all the Protected Material
5 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
6 any copies, abstracts, compilations, summaries or any other format reproducing or
7 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
8 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
9 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
10 expert reports, attorney work product, and consultant and expert work product, even if
11 such materials contain Protected Material. Any such archival copies that contain or
12 constitute Protected Material remain subject to this Protective Order as set forth in
13 Section 4 (DURATION).

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17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: October 11, 2016

LAW OFFICE OF ROBERT R. POWELL

19
20 By: /s/ Robert R. Powell

ROBERT R. POWELL

Attorneys for Plaintiffs

21
22
23 DATED: October 11, 2016

MITCHELL, BRISSO, DELANEY & VRIEZE

24 By: /s/ Nancy K. Delaney

NANCY K. DELANEY

Attorneys for County of Mendocino
Defendants

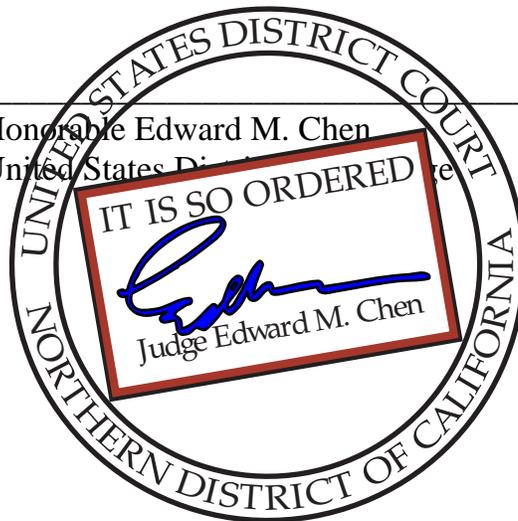
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 10/12/16 _____

Honorable Edward M. Chen
United States District Judge



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety
and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of
_____ [insert formal name of the case and the number and initials assigned to
it by the court]. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____