

1 Timothy M. Freudenberger, State Bar No. 138257  
 Alison L. Tsao, State Bar No. 198250  
 2 Marianne C. Koepf, State Bar No. 191025  
 CARLTON DiSANTE & FREUDENBERGER LLP  
 3 601 Montgomery Street  
 Suite 350  
 4 San Francisco, California 94111  
 Telephone: (415) 981-3233  
 5 Facsimile: (415) 981-3246  
 E-Mail: tfreud@cflaborlaw.com  
 6 atsao@cflaborlaw.com  
 mkoepf@cflaborlaw.com

7 Attorneys for Defendant  
 8 WELLS FARGO BANK, N.A.

9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**

12 MARTIN LEWIS and AARON COOPER, on	)	Case No. CV-08-2670-CW
behalf of themselves and a class of those	)	
13 similarly situated,	)	Judge: Hon. Claudia Wilken
	)	
14 Plaintiffs,	)	<b>STIPULATED PROTECTIVE ORDER</b>
vs.	)	
15	)	Action Filed: May 28, 2008
16 WELLS FARGO & CO.,	)	Trial Date: None Set
	)	
17 Defendant.	)	

18 **1. PURPOSES AND LIMITATIONS**

19 Disclosure and discovery activity in this action are likely to involve production of  
 20 confidential, proprietary, or private information for which special protection from public disclosure  
 21 and from use for any purpose other than prosecuting this litigation would be warranted.  
 22 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 23 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 24 all disclosures or responses to discovery and that the protection it affords extends only to the  
 25 limited information or items that are entitled under the applicable legal principles to treatment as  
 26 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated  
 27 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule  
 28 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied

1 when a party seeks permission from the court to file material under seal.

2 **2. DEFINITIONS**

3 **2.1 Party:** any party to this action, including all of its officers, directors,  
4 employees, consultants, retained experts, and outside counsel (and their support staff).

5 **2.2 Disclosure or Discovery Material:** all items or information, regardless of  
6 the medium or manner generated, stored, or maintained (including, among other things, testimony,  
7 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
8 discovery in this matter.

9 **2.3 "Confidential" Information or Items:** information (regardless of how  
10 generated, stored or maintained) or tangible things that qualify for protection under standards  
11 developed under Fed. R. Civ. P. 26(c), the Local Rules of the Northern District of California, and  
12 other applicable authority.

13 **2.4 "Highly Confidential- Attorneys' Eyes Only" Information or Items:**  
14 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or  
15 nonparty would create a substantial risk of serious injury that could not be avoided by less  
16 restrictive means.

17 **2.5 Receiving Party:** a Party that receives Disclosure or Discovery Material  
18 from a Producing Party.

19 **2.6 Producing Party:** a Party or non-party that produces Disclosure or  
20 Discovery Material in this action.

21 **2.7. Designating Party:** a Party or non-party that designates information or items  
22 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
23 Confidential Attorneys' Eyes Only."

24 **2.8 Protected Material:** any Disclosure or Discovery Material that is designated  
25 as "Confidential" or as "Highly Confidential- Attorneys' Eyes Only."

26 **2.9. Outside Counsel:** attorneys who are not employees of a Party but who are  
27 retained to represent or advise a Party in this action.

28 **2.10 House Counsel:** attorneys who are employees of a Party.

1                   **2.11 Counsel (without qualifier):** Outside Counsel and House Counsel (as well  
2 as their support staffs).

3                   **2.12 Expert:** a person who has been retained by a Party or its counsel to serve as  
4 an expert witness or as a consultant in this action and who is not a past or a current employee of a  
5 Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an  
6 employee of a Party or a competitor of a Party. This definition includes a professional jury or trial  
7 consultant and a damages consultant retained in connection with this litigation.

8                   **2.13 Professional Vendors:** persons or entities that provide litigation support  
9 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
10 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
11 subcontractors.

12                   **3. SCOPE**

13                   The protections conferred by this Stipulation and Order cover not only Protected  
14 Material (as defined above), but also any information copied or extracted therefrom, as well as all  
15 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
16 presentations by parties or counsel to or in court or in other settings that might reveal Protected  
17 Material.

18                   **4. DURATION**

19                   Even after the termination of this litigation, the confidentiality obligations imposed  
20 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
21 order otherwise directs.

22                   **5. DESIGNATING PROTECTED MATERIAL**

23                   **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

24 Each Party or non-party that designates information or items for protection under this Order must  
25 take care to limit any such designation to specific material that qualifies under the appropriate  
26 standards. A Designating Party must take care to designate for protection only those parts of  
27 material, documents, items, or oral or written communications that qualify - so that other portions  
28 of the material, documents, items, or communications for which protection is not warranted are not

1 swept unjustifiably within the ambit of the designation.

2           If it comes to a Party's or a non-party's attention that information or items that it  
3 designated for protection do not qualify for protection at all, or do not qualify for the level of  
4 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
5 withdrawing the mistaken designation.

6           **5.2 Manner and Timing of Designations.** Except as otherwise provided in this  
7 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
8 material that qualifies for protection under this Order must be clearly so designated before the  
9 material is disclosed or produced.

10           Designation in conformity with this Order requires:

11           (a) for information in documentary form (apart from transcripts of  
12 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" upon the  
14 Document indicating such in a way that brings the designation to the attention of a reasonable  
15 examiner, or otherwise puts the Receiving Party on reasonable notice that it contains Confidential  
16 Information. If only a portion or portions of the material on a page qualifies for protection, the  
17 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
18 markings in the margins) and must specify, for each portion, the level of protection being asserted  
19 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").

20           A Party or non-party that makes original documents or materials available  
21 for 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 "HIGHLY  
24 CONFIDENTIAL ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
25 documents it wants copied and produced, the Producing Party must determine which documents, or  
26 portions thereof, qualify for protection under this Order, then, before producing the specified  
27 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or  
28 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY") on each page that contains

1 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
2 the Producing Party also must clearly identify the protected portions) (e.g., by making appropriate  
3 markings in the margins) and must specify, for each portion, the level of protection being asserted  
4 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").

5 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
6 that the Party or non-party offering or sponsoring the testimony identify on the record, before the  
7 close of the deposition, hearing, or other proceeding, all protected testimony, with specificity, and  
8 further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL -  
9 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of  
10 testimony that is entitled to protection, and when it appears that substantial portions of the  
11 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
12 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to  
13 have up to 20 days to identify the specific portions of the testimony as to which protection is sought  
14 and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY  
15 CONFIDENTIAL - ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are  
16 appropriately designated for protection within the 20 days shall be covered by the provisions of this  
17 Stipulated Protective Order.

18 Transcript pages containing Protected Material must be separately bound by  
19 the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or  
20 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," as instructed by the Party or  
21 nonparty offering or sponsoring the witness or presenting the testimony.

22 (c) for information produced in some form other than documentary, and for  
23 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
24 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or  
25 "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY." If only portions of the information  
26 or item warrant protection, the Producing Party, to the extent practicable, shall identify the  
27 protected portions, specifying whether they qualify as "CONFIDENTIAL" or as "HIGHLY  
28 CONFIDENTIAL- ATTORNEYS' EYES ONLY."

1           **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to  
2 designate qualified information or items as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -  
3 ATTORNEYS' EYES ONLY" does not, standing alone, waive the Designating Party's right to  
4 secure protection under this Order for such material. If material is appropriately designated as  
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES ONLY" after the  
6 material was initially produced, the Receiving Party, on timely notification of the designation, must  
7 make reasonable efforts to assure that the material is treated in accordance with the provisions of  
8 this Order.

9           **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10           **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's  
11 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
12 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
13 its right to challenge a confidentiality designation by electing not to mount a challenge promptly  
14 after the original designation is disclosed.

15           **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a  
16 Designating Party's confidentiality designation must do so in good faith and must begin the process  
17 by meeting and conferring with counsel for the Designating Party as that term is defined in Civil  
18 Local Rule 1-5(n). In conferring, the challenging Party must explain the basis for its belief that the  
19 confidentiality 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 designation is  
21 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the  
22 next stage of the challenge process only if it has engaged in this meet and confer process first.

23           **6.3 Judicial Intervention.** A Party that elects to press a challenge to a  
24 confidentiality designation after considering the justification offered by the Designating Party may  
25 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
26 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.  
27 Each such motion must be accompanied by a competent declaration that affirms that the movant  
28 has complied with the meet and confer requirements imposed in the preceding paragraph and that

1 sets forth with specificity the justification for the confidentiality designation that was given by the  
2 Designating Party in the meet and confer dialogue.

3           The burden of persuasion in any such challenge proceeding shall be on the  
4 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
5 material in question the level of protection to which it is entitled under the Producing Party's  
6 designation.

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

8           **7.1 Basic Principles.** A Receiving Party may use Protected Material that is  
9 disclosed or produced by another Party or by a non-party in connection with this case only for  
10 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
11 disclosed only to the categories of persons and under the conditions described in this Order. When  
12 the litigation has been terminated, a Receiving Party must comply with the provisions of section  
13 11, below (FINAL DISPOSITION).

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

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

20                   (a) named parties, their Counsel (in-house and outside), their employees to  
21 whom it is reasonably necessary to disclose the information for this litigation, and individuals who  
22 opt in to the lawsuit, each of whom must have signed the "Agreement to Be Bound by Protective  
23 Order" that is attached hereto as Exhibit A;

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 have signed  
26 the "Agreement to Be Bound by Protective Order" (Exhibit A);

27                   (c) Experts of the Receiving Party who are engaged by Counsel to assist in  
28 this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

1 (d) the Court and its personnel (including court reporters, their staffs, and  
2 professional vendors to whom disclosure is reasonably necessary for this litigation);

3 (e) fact witnesses in the action to whom disclosure is reasonably necessary  
4 and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of  
5 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
6 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
7 under this Stipulated Protective Order.

8 (f) the author of the document or the original source of the information.

9 **7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES**  
10 **ONLY" Information or Items.** Unless otherwise ordered by the court or permitted in writing by  
11 the Designating Party, a Receiving Party may disclose any information or item designated  
12 "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY" only to:

13 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
14 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
15 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
16 hereto as Exhibit A;

17 (b) Experts (as defined in this Order) who are engaged by Counsel to assist  
18 in this litigation who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

19 (c) the Court and its personnel (including court reporters, their staffs, and  
20 professional vendors to whom disclosure is reasonably necessary for this litigation); and

21 (d) the author of the document or the original source of the information.

22 **7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL**  
23 **ATTORNEYS' EYES ONLY" Information or Items to "Experts"**

24 (a) Unless otherwise ordered by the court or agreed in writing by the  
25 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any  
26 information or item that has been designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES  
27 ONLY" first must make a written request to the Designating Party that (1) identifies the specific  
28 HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to

1 the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary  
2 residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current  
3 employer(s), (5) identifies each person or entity from whom the Expert has received compensation  
4 for work in his or her areas of expertise or to whom the expert has provided professional services at  
5 any time during the preceding five years, and (6) identifies (by name and number of the case, filing  
6 date, and location of court) any litigation in connection with which the Expert has provided any  
7 professional services during the preceding five years.

8 (b) A Party that makes a request and provides the information specified in  
9 the preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
10 within seven court days of delivering the request, the Party receives a written objection from the  
11 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

12 (c) A Party that receives a timely written objection must meet and confer  
13 with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
14 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may  
15 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
16 applicable) seeking permission from the court to do so. Any such motion must describe the  
17 circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert  
18 is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any  
19 additional means that might be used to reduce that risk. In addition, any such motion must be  
20 accompanied by a competent declaration in which the movant describes the parties' efforts to  
21 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)  
22 and sets forth the reasons advanced by the Designating Party for its refusal to approve the  
23 disclosure.

24 In any such proceeding the Party opposing disclosure to the Expert shall bear  
25 the burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
26 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

27 ///

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1           **8.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
2 **OTHER LITIGATION.**

3           If a Receiving Party is served with a subpoena or an order issued in other litigation  
4 that would compel disclosure of any information or items designated in this action as  
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the  
6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
7 and in no event more than three (3) court days after receiving the subpoena or order. Such  
8 notification must include a copy of the subpoena or court order.

9           The Receiving Party also must immediately inform in writing the Party that caused  
10 the subpoena or order to issue in the other litigation (the "Subpoenaing Party") that some or all the  
11 material covered by the subpoena or order is the subject of this Protective Order. In addition, the  
12 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the  
13 Subpoenaing Party.

14           The purpose of imposing these duties is to alert the interested parties to the existence  
15 of this Protective Order and to afford the Designating Party in this case an opportunity to try to  
16 protect its confidentiality interests in the court from which the subpoena or order issued. The  
17 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
18 confidential material - and nothing in these provisions should be construed as authorizing or  
19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20           **9.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
22 Protected Material to any person or in any circumstance not authorized under this Stipulated  
23 Protective Order, the Receiving Party must immediately ( a) notify in writing the Designating Party  
24 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected  
25 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
26 terms of this Order, and (d) request that such person or persons immediately destroy the  
27 inadvertently disclosed Protected Material and execute the "Acknowledgment and Agreement to Be  
28 Bound" that is attached hereto as Exhibit A.

1           **10. FILING PROTECTED MATERIAL**

2           Without written permission from the Designating Party or a court order secured after  
3 appropriate notice to all interested persons, a Party may not file in the public record in this action  
4 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
5 with Civil Local Rule 79-5.

6           **11. FINAL DISPOSITION**

7           Unless otherwise ordered or agreed in writing by the Producing Party, within sixty  
8 (60) days after the final termination of this action, each Receiving Party must return all Protected  
9 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all  
10 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
11 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
12 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
13 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
14 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day  
15 deadline that identifies (by category, where appropriate) all the Protected Material that was  
16 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
17 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected  
18 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
19 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,  
20 even if such materials contain Protected Material. Any such archival copies that contain or  
21 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
22 (DURATION), above.

23           **12. MISCELLANEOUS**

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           **12.2 Right to Assert Other Objections.** By stipulating to the entry of this  
27 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
28 producing any information or item on any ground not addressed in this Stipulated Protective Order.

1 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
2 material covered by this Protective Order.

3 **12.3 Right to Dissemination.** The restrictions set forth in this Order shall not  
4 apply to (a) information that was, is or becomes public knowledge through its authorized release  
5 by a person or entity who rightfully obtained and possesses such information during the normal  
6 course of business, and not in violation of this Order; or (b) Defendant with respect to its own  
7 information or information received or created during the normal course of its own business.

8  
9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: December 10, 2008

/S/ - Jahan C. Sagafi

Jahan C. Sagafi  
Attorneys for Plaintiffs  
TED LEWIS and AARON COOPER

11  
12  
13  
14 DATED: December 11, 2008

/S/ - Alison L. Tsao

Alison L. Tsao  
Attorneys for Defendant  
WELLS FARGO BANK, N.A.

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16  
17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 12/12/08



19 DATED: \_\_\_\_\_

Claudia Wilken  
UNITED STATES DISTRICT JUDGE

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**Exhibit A**

**Agreement Concerning Information Covered By A Protective Order**

**Entered In The United States District Court For The Northern District Of California**

I, \_\_\_\_\_ [print or type full name], 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 in *Lewis v. Wells Fargo & Co.*, Case No. 08-2670 CW (N.D. Cal.). 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: \_\_\_\_\_

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

Signature: \_\_\_\_\_  
[signature]