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 UNITED CORPORATION and NORTH AMERICAN  
 6 BREWERIES, INC.

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

11 SIMON PESCH,  
 12 Plaintiff,

13 v.

14 INDEPENDENT BREWERS UNITED  
 CORPORATION, NORTH AMERICAN  
 15 BREWERIES, INC., and DOES 1-20,  
 inclusive,  
 16 Defendants.

Case No. 4:13-cv-05317 DMR

**STIPULATED PROTECTIVE ORDER**

Action Filed: October 11, 2013

17  
 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  
 21 disclosure and from use for any purpose other than prosecuting this litigation may be  
 22 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
 23 following Stipulated Protective Order. The parties acknowledge that this Order does not  
 24 confer blanket protections on all disclosures or responses to discovery and that the  
 25 protection it affords from public disclosure and use extends only to the limited information  
 26 or items that are entitled to confidential treatment under the applicable legal principles.  
 27 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated

1 Protective Order does not entitle them to file confidential information under seal; Civil  
2 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will  
3 be applied when a party seeks permission from the court to file material under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
6 information or items under this Order.

7 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it  
8 is generated, stored or maintained) or tangible things that qualify for protection under  
9 Federal Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
11 (as well as their support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or items  
13 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

14 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
15 medium or manner in which it is generated, stored, or maintained (including, among other  
16 things, testimony, transcripts, and tangible things), that are produced or generated in  
17 disclosures or responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in a matter  
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
20 expert witness or as a consultant in this action.

21 2.7 House Counsel: attorneys who are employees of a party to this action. House  
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.8 Non-Party: any natural person, partnership, corporation, association, or  
24 other legal entity not named as a Party to this action.

25 2.9 Outside Counsel of Record: attorneys who are not employees of a party to  
26 this action but are retained to represent or advise a party to this action and have appeared  
27 in this action on behalf of that party or are affiliated with a law firm which has appeared

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1 on behalf of that party.

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3 2.10 Party: any party to this action, including all of its officers, directors,  
4 employees, consultants, retained experts, and Outside Counsel of Record (and their  
5 support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
7 Discovery Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support  
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
10 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
11 their employees and subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is designated  
13 as "CONFIDENTIAL."

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from  
15 a Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected  
18 Material (as defined above), but also (1) any information copied or extracted from  
19 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
20 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel  
21 that might reveal Protected Material. However, the protections conferred by this  
22 Stipulation and Order do not cover the following information: (a) any information that is in  
23 the public domain at the time of disclosure to a Receiving Party or becomes part of the  
24 public domain after its disclosure to a Receiving Party as a result of publication not  
25 involving a violation of this Order, including becoming part of the public record through  
26 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
27 disclosure or obtained by the Receiving Party after the disclosure from a source who

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1 obtained the information lawfully and under no obligation of confidentiality to the  
2 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
3 agreement or order.

4 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
14 Party or Non-Party that designates information or items for protection under this Order  
15 must take care to limit any such designation to specific material that qualifies under the  
16 appropriate standards. The Designating Party must designate for protection only those  
17 parts of material, documents, items, or oral or written communications that qualify – so  
18 that other portions of the material, documents, items, or communications for which  
19 protection is not warranted are not swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
21 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
22 to unnecessarily encumber or retard the case development process or to impose  
23 unnecessary expenses and burdens on other parties) expose the Designating Party to  
24 sanctions.

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

1           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
4 must be clearly so designated before the material is disclosed or produced.

5           Designation in conformity with this Order requires:

6           (a) for information in documentary form (e.g., paper or electronic documents,  
7 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
8 Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected  
9 material. If only a portion or portions of the material on a page qualifies for protection, the  
10 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
11 appropriate markings in the margins).

12           A Party or Non-Party that makes original documents or materials available for  
13 inspection need not designate them for protection until after the inspecting Party has  
14 indicated which material it would like copied and produced. During the inspection and  
15 before the designation, all of the material made available for inspection shall be deemed  
16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
17 copied and produced, the Producing Party must determine which documents, or portions  
18 thereof, qualify for protection under this Order. Then, before producing the specified  
19 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page  
20 that contains Protected Material. If only a portion or portions of the material on a page  
21 qualifies for protection, the Producing Party also must clearly identify the protected  
22 portion(s) (e.g., by making appropriate markings in the margins).

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

26           (c) for information produced in some form other than documentary and for any  
27 other tangible items, that the Producing Party affix in a prominent place on the exterior of

1 the container or containers in which the information or item is stored the legend  
2 "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
3 protection, the Producing Party, to the extent practicable, shall identify the protected  
4 portion(s).

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6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
7 to designate qualified information or items does not, standing alone, waive the  
8 Designating Party's right to secure protection under this Order for such material. Upon  
9 timely correction of a designation, the Receiving Party must make reasonable efforts to  
10 assure that the material is treated in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
13 of confidentiality at any time. Unless a prompt challenge to a Designating Party's  
14 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
15 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
16 does not waive its right to challenge a confidentiality designation by electing not to mount  
17 a challenge promptly after the original designation is disclosed.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
19 process by providing written notice of each designation it is challenging and describing the  
20 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
21 written notice must recite that the challenge to confidentiality is being made in accordance  
22 with this specific paragraph of the Protective Order. The parties shall attempt to resolve  
23 each challenge in good faith and must begin the process by conferring directly (in voice to  
24 voice dialogue; other forms of communication are not sufficient) within 14 days of the date  
25 of service of notice. In conferring, the Challenging Party must explain the basis for its belief  
26 that the confidentiality designation was not proper and must give the Designating Party an  
27 opportunity to review the designated material, to reconsider the circumstances, and, if no

1 change in designation is offered, to explain the basis for the chosen designation. A  
2 Challenging Party may proceed to the next stage of the challenge process only if it has  
3 engaged in this meet and confer process first or establishes that the Designating Party is  
4 unwilling to participate in the meet and confer process in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge following  
6 compliance with Section 6.2, the parties shall resolve the dispute in accordance with  
7 Section 10 of Magistrate Ryu's Standing Order, which reads in relevant part:

8 If disagreements remain, the parties shall file a joint letter with  
9 Magistrate Ryu no later than five business days after the meet and confer  
10 session, unless otherwise directed by the court. **Lead trial counsel for both**  
11 **parties must sign the letter**, which shall include an attestation that the  
12 parties met and conferred in person or by telephone regarding all issues prior  
13 to filing the letter. Going issue-by-issue, the joint letter shall describe each  
14 unresolved issue, summarize each party's position with appropriate legal  
15 authority; and provide each party's final proposed compromise before  
16 moving to the next issue. The joint letter shall not exceed ten pages without  
17 leave of court. **Parties are expected to plan for and cooperate in preparing**  
18 **the joint letter so that each side has adequate time to address the**  
19 **arguments.** In the rare instance that a joint letter is not possible, each side  
20 may submit a letter not to exceed four pages, which shall include an  
21 explanation of why a joint letter was not possible. The parties shall submit  
22 one exhibit to the letter that only sets forth each disputed discovery request  
23 in full, followed immediately by the objections and/or responses thereto. No  
24 other information shall be included in any such exhibit. No other exhibits  
25 shall be submitted without prior approval by the court. The court will  
26 review the submission(s) and determine whether formal briefing or  
27 proceedings are necessary. **Discovery letter briefs must be e-filed under the**  
28 **Civil Events category of Motions and Related Filings > Motions – General >**  
**"Discovery Letter Brief".**

11. In the event that a discovery hearing is ordered, the court has found  
that it is often efficient and beneficial for counsel to appear *in person*. This  
provides the opportunity, where appropriate, to engage counsel in resolving  
aspects of the discovery dispute while remaining available to rule on any  
disputes that counsel are not able to resolve. For this reason, the court  
expects counsel to appear in person. Permission for a party to attend by  
telephone may be granted, in the court's discretion, upon written request  
made at least one week in advance of the hearing if the court determines that  
good cause exists to excuse personal attendance, and that personal  
attendance is not needed in order to have an effective discovery hearing. The  
facts establishing good cause must be set forth in the request.

Until the challenge to the confidentiality designation is resolved, all parties shall  
continue to afford the material in question the level of protection to which it is entitled

1 under the Producing Party's designation.

2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

3 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
4 disclosed or produced by another Party or by a Non-Party in connection with this case  
5 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
6 Material may be disclosed only to the categories of persons and under the conditions  
7 described in this Order. When the litigation has been terminated, a Receiving Party must  
8 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
13 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
14 may disclose any information or item designated "CONFIDENTIAL" only to:

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

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

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

25 (d) the court and its personnel;

26 (e) court reporters and their staff, professional jury or trial consultants, mock  
27 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this

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1 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
2 (Exhibit A);

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

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

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

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

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with the  
25 subpoena or court order shall not produce any information designated in this action as  
26 "CONFIDENTIAL" before a determination by the court from which the subpoena or order  
27 issued, unless the Party has obtained the Designating Party's permission. The Designating  
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1 Party shall bear the burden and expense of seeking protection in that court of its  
2 confidential material – and nothing in these provisions should be construed as authorizing  
3 or encouraging a Receiving Party in this action to disobey a lawful directive from another  
4 court.

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

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

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

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

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

22 (3) make the information requested available for inspection by the Non-  
23 Party.

24 (c) If the Non-Party fails to object or seek a protective order from this court  
25 within 14 days of receiving the notice and accompanying information, the Receiving Party  
26 may produce the Non-Party's confidential information responsive to the discovery request.  
27 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any

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1 information in its possession or control that is subject to the confidentiality agreement with  
2 the Non-Party before a determination by the court. Absent a court order to the contrary,  
3 the Non-Party shall bear the burden and expense of seeking protection in this court of its  
4 Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
15 MATERIAL

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

25 12. MISCELLANEOUS

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

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1           12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
2 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  
4 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
5 evidence of any of 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  
8 may not file in the public record in this action any Protected Material. A Party that seeks to  
9 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected  
10 Material may only be filed under seal pursuant to a court order authorizing the sealing of  
11 the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order  
12 will issue only upon a request establishing that the Protected Material at issue is  
13 privileged, protectable as a trade secret, or otherwise entitled to protection under the law.  
14 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
15 Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the  
16 public record pursuant to Civil Local Rule 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  
20 such material. As used in this subdivision, "all Protected Material" includes all copies,  
21 abstracts, compilations, summaries, and any other format reproducing or capturing any of  
22 the Protected Material. Whether the Protected Material is returned or destroyed, the  
23 Receiving Party must submit a written certification to the Producing Party (and, if not the  
24 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
25 (by category, where appropriate) all the Protected Material that was returned or destroyed  
26 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
27 compilations, summaries or any other format reproducing or capturing any of the

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

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: February 18, 2014 LAW OFFICE OF RICHARD VAZNAUGH  
9 RICHARD J. VAZNAUGH  
10 By: /s/ Richard J. Vaznaugh  
11 Attorneys for Plaintiff  
12 SIMON PESCH

13 DATED: February 18, 2014 COOK BROWN, LLP  
14 TERRY A. WILLS, ESQ.  
15 BRIAN D. BERTOSSA, ESQ.  
16 By: /s/ Brian D. Bertossa  
17 Attorneys for Defendants  
18 INDEPENDENT BREWERS UNITED  
19 CORPORATION AND NORTH AMERICAN  
20 BREWERIES, INC.

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: March 3, 2014  
23   
24 \_\_\_\_\_  
25 UNITED STATES DISTRICT COURT  
26 MAGISTRATE JUDGE DONNA M. RYU  
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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: \_\_\_\_\_