

1 Aaron P. Minnis, Esq. (SBN202935)  
 2 Sonya L. Smallets, Esq. (SBN226190)  
 3 Sean D. McHenry, Esq. (SBN284175)  
 4 MINNIS & SMALLETS LLP  
 5 369 Pine Street, Suite 500  
 6 San Francisco, CA 94104  
 7 T: (415) 551-0885  
 8 F: (415) 683-7157  
 9 E: aaron@minnisandsmallets.com  
 10 ssmallets@minnisandsmallets.com  
 11 sean@minnisandsmallets.com

12 Attorneys for Plaintiff  
 13 LUISA PINZON

14 SARAH E. ROBERTSON #142439  
 15 CASEY L. WILLIAMS #280324  
 16 DONAHUE FITZGERALD LLP  
 17 1999 Harrison Street, 25th Floor  
 18 Oakland, California 94612  
 19 Telephone: (510) 451-3300  
 20 Facsimile: (510) 451-1527  
 21 Email: srobertson@donahue.com  
 22 cwilliams@donahue.com

23 Attorneys for Defendants  
 24 SIMPSON GUMPERTZ & HEGER INC.

25 UNITED STATES DISTRICT COURT  
 26 NORTHERN DISTRICT OF CALIFORNIA  
 27 OAKLAND DIVISION

28 LUISA PINZON,

PLAINTIFF,

vs.

SIMPSON GUMPERTZ & HEGER, INC.  
 and DOES 1-10,  
 DEFENDANTS.

Case No. 14-cv-05562 YGR

~~PROPOSED~~ AND STIPULATED  
 PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public

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

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
13 information or items under this Order.

14 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
15 generated, stored or maintained) or tangible things that qualify for protection under Federal  
16 Rule of Civil Procedure 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
18 (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or items  
20 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

21 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
22 medium or manner in which it is generated, stored, or maintained (including, among other  
23 things, testimony, transcripts, and tangible things), that are produced or generated in  
24 disclosures or responses to discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter  
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
27 witness or as a consultant in this action.

1           2.7    House Counsel: attorneys who are employees of a party to this action. House  
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3           2.8    Non-Party: any natural person, partnership, corporation, association, or other  
4 legal entity not named as a Party to this action.

5           2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
6 action but are retained to represent or advise a party to this action and have appeared in this  
7 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
8 that party.

9           2.10 Party: any party to this action, including all of its officers, directors,  
10 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
11 staffs).

12          2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
13 Material in this action.

14          2.12 Professional Vendors: persons or entities that provide litigation support  
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,  
16 and organizing, storing, or retrieving data in any form or medium) and their employees and  
17 subcontractors.

18          2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
19 “CONFIDENTIAL.”

20          2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
21 Producing Party.

22 3.    SCOPE

23           The protections conferred by this Stipulation and Order cover not only Protected  
24 Material (as defined above), but also (1) any information copied or extracted from Protected  
25 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)  
26 any testimony, conversations, or presentations by Parties or their Counsel that might reveal  
27 Protected Material. However, the protections conferred by this Stipulation and Order do not

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1 cover the following information: (a) any information that is in the public domain at the time of  
2 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a  
3 Receiving Party as a result of publication not involving a violation of this Order, including  
4 becoming part of the public record through trial or otherwise; and (b) any information known  
5 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
6 disclosure from a source who obtained the information lawfully and under no obligation of  
7 confidentiality to the Designating Party. Any use of Protected Material at trial shall be  
8 governed by a separate agreement or order.

9 4. DURATION

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

17 5. DESIGNATING PROTECTED MATERIAL

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

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

3 If it comes to a Designating Party's attention that information or items that it designated for  
4 protection do not qualify for protection, that Designating Party must promptly notify all other  
5 Parties that it is 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  
8 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must  
9 be clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

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

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

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

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

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

9       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
10 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding  
11 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining  
12 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties  
13 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
14 Failure by a Designating Party to file such discovery dispute letter within the applicable 21 or  
15 14 day period (set forth above) with the Court shall automatically waive the confidentiality  
16 designation for each challenged designation. If, after submitting a joint letter brief, the Court  
17 allows that a motion may be filed, any such motion must be accompanied by a competent  
18 declaration affirming that the movant has complied with the meet and confer requirements  
19 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the  
20 discovery matter to a Magistrate Judge.

21       In addition, the parties may file a joint letter brief regarding a challenge to a  
22 confidentiality designation at any time if there is good cause for doing so, including a  
23 challenge to the designation of a deposition transcript or any portions thereof. If, after  
24 submitting a joint letter brief, the Court allows that a motion may be filed, any motion brought  
25 pursuant to this provision must be accompanied by a competent declaration affirming that the  
26 movant has complied with the meet and confer requirements imposed by the preceding  
27 paragraph. The Court, in its discretion, may elect to refer the discovery matter to a Magistrate  
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1 Judge.

2 The burden of persuasion in any such challenge proceeding shall be on the Designating  
3 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
4 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
5 sanctions. Unless the Designating Party has waived the confidentiality designation by failing  
6 to file a letter brief to retain confidentiality as described above, all parties shall continue to  
7 afford the material in question the level of protection to which it is entitled under the  
8 Producing Party's designation until the court rules on the challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

26 (b) the officers, directors, and employees (including House Counsel) of the  
27 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have



1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

5 (d) the court and its personnel;

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

10 (f) during their depositions, witnesses in the action to whom disclosure is  
11 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
12 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

13 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
14 Material must be separately bound by the court reporter and may not be disclosed to anyone  
15 except as permitted under this Stipulated Protective Order.

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

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
19 OTHER LITIGATION

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

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

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

1 Order; and

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

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

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

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

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

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

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

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

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

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
18 PROTECTED MATERIAL

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

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
3 to seek its modification by the court in the future.

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

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

20 13. FINAL DISPOSITION

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

1 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
2 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
3 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
4 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial  
6 exhibits, expert reports, attorney work product, and consultant and expert work product, even  
7 if such materials contain Protected Material. Any such archival copies that contain or  
8 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
9 (DURATION).

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11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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Dated: May 7, 2015

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/s/ Sonya Smallets

AARON P. MINNIS  
MINNIS & SMALLETS LLP  
Attorneys for Plaintiff  
SONYA SMALLETS

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Dated: May 7, 2015

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/s/ Casey Williams

DONAHUE FITZGERALD LLP  
Attorneys for Simpson Gumpertz & Heger  
CASEY WILLIAMS

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED: May 14, 2015

  
Judge Yvonne Gonzalez Rogers  
United States District Court 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 [\_\_\_\_\_] in the case of \_\_\_\_\_ *Pinzon v. Simpson Gumpertz Heger Inc.*, Case No.-cv—05562 YGR. 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: \_\_\_\_\_