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17
 18 **UNITED STATES DISTRICT COURT**
 19
 20 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**
 21

22 **MARJORIE BROOKS, individually and on**
 23 **behalf**
 24 **of herself and all others similarly situated,**
 25
 26 **Plaintiff,**
 27
 28 **v.**
 29 **COMMUNITY LENDING, INC., RBS**
 30 **FINANCIAL PRODUCTS INC., f/k/a**
 31 **GREENWICH CAPITAL FINANCIAL**
 32 **PRODUCTS, INC., RBS ACCEPTANCE**
 33 **CORP.,**
 34 **f/k/a GREENWICH CAPITAL**
 35 **ACCEPTANCE,**
 36 **INC., GMAC MORTGAGE, LLC, WELLS**
 37 **FARGO BANK, N.A., AS TRUSTEE OF THE**
 38 **HARBORVIEW MORTGAGE LOAN TRUST**
 39 **2006-10 and DOES 5 through 10, inclusive,**
 40
 41 **Defendants,**

42 **Case No. C-07-04501-JF**
 43
 44 Judge: Hon. Jeremy Fogel
 45
 46 CLASS ACTION
 47
 48 MODIFIED
 49 **STIPULATED PROTECTIVE ORDER**
 50 **AND |XXXXXXXXXXXXXXXXX|ORDER**

1 1. PURPOSES AND LIMITATIONS

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

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House
21 Counsel (as well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

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

28

1 as "CONFIDENTIAL."

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only Protected
6 Material and Private Consumer Information (as defined above), but also (1) any information copied
7 or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of
8 Protected Material; and (3) any testimony, conversations, or presentations by Parties or their
9 Counsel that might reveal Protected Material. However, the protections conferred by this
10 Stipulation and Order do not cover the following information: (a) any information that is in the
11 public domain at the time of disclosure to a Receiving Party or becomes part of the public domain
12 after its disclosure to a Receiving Party as a result of publication not involving a violation of this
13 Order, including becoming part of the public record through trial or otherwise; and (b) any
14 information known to the Receiving Party prior to the disclosure or obtained by the Receiving
15 Party after the disclosure from a source who obtained the information lawfully and under no
16 obligation of confidentiality to the Designating Party. Due to the confidential nature of the
17 Protected Material, including the expected presence of Private Consumer Information within the
18 Protected Material, the Parties will take reasonable steps to preserve the confidentiality of
19 Protected Material at trial, and will revisit the issue as necessary prior to trial to determine the most
20 appropriate treatment of such materials. Use of Protected Material at trial shall be governed by a
21 separate agreement or order.

22 4. DURATION

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

3 5. DESIGNATING PROTECTED MATERIAL

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

5 Each Party or Non-Party that designates information or items for protection under this Order
6 must take care to limit any such designation to specific material that qualifies under the
7 appropriate standards. The Designating Party must designate for protection only those parts
8 of material, documents, items, or oral or written communications that qualify - so that other
9 portions of the material, documents, items, or communications for which protection is not
10 warranted are not swept unjustifiably within the ambit of this Order.

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

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

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
20 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must
21 be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents,
24 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
25 Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected
26 material.

27 A Party or Non-Party that makes original documents or materials available for
28 inspection need not designate them for protection until after the inspecting Party has indicated

1 which material it would like copied and produced. During the inspection and before the
2 designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL."
3 After the inspecting Party has identified the documents it wants copied and produced, the
4 Producing Party must determine which documents, or portions thereof, qualify for protection under
5 this Order. Then, before producing the specified documents, the Producing Party must affix the
6 "CONFIDENTIAL" legend to each page that contains Protected Material.

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

10 (c) for information produced in some form other than documentary and for any
11 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
12 container or containers in which the information or item is stored the legend "CONFIDENTIAL."

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

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
26 process by providing written notice of each designation it is challenging and describing the basis
27 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
28 notice must recite that the challenge to confidentiality is being made in accordance with this

1 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
2 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
3 forms of communication are not sufficient) within 14 days of the date of service of notice. In
4 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
5 designation was not proper and must give the Designating Party an opportunity to review the
6 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
7 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
8 the challenge process only if it has engaged in this meet and confer process first or establishes that
9 the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
11 intervention, a Party that elects to press a challenge to a confidentiality designation may file and
12 serve a motion under Civil Local Rule 7 (in compliance with Civil Local Rule 79-5, if applicable)
13 that identifies the challenged material and sets forth in detail the basis for the challenge. Each such
14 motion must be accompanied by a competent declaration that affirms that the movant has complied
15 with the meet and confer requirements imposed in the preceding paragraph that sets forth with
16 specificity the justification for the confidentiality designation that was given by the Designating
17 Party in the meet and confer dialogue. The Challenging Party may file such a motion challenging a
18 confidentiality designation at any time if there is good cause for doing so, including a challenge to
19 the designation of a deposition transcript or any portions thereof.

20 The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
22 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
23 sanctions. All parties shall continue to afford the material in question the level of protection to
24 which it is entitled under the Producing Party's designation until the court rules on the challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this case only for
28 prosecuting, defending, or attempting to settle this particular action and for no other purposes.

1 Such Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the litigation has been terminated, a Receiving Party
3 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

10 (a) The Parties' Counsel in this action, the partners, associates, and employees
11 of such counsel, and their authorized secretarial and paralegal staffs, to the extent reasonably
12 necessary and only for the purpose of conducting or assisting in this action;

13 (b) The Parties and their parents and subsidiaries, including present and former
14 officers, directors, partners, employees, to the extent reasonably necessary and only for the purpose
15 of conducting or assisting in this action, provided, however, the requirements of this paragraph 7.2
16 do not apply to Parties' receipt of its own Protected Material or, for any Plaintiff herein, any
17 Protected Material received from a co-Plaintiff in this action or for any Defendant herein, any
18 Protected Material received from a co-Defendant in this action;

19 (c) Experts (as defined in this Order) who have signed the "Agreement to Be
20 Bound by Protective Order" (Exhibit A);

21 (d) The Court and court personnel, jury members, deposition officers, court
22 reporters, and videographers used in connection with this litigation;

23 (e) Court reporters, their staffs, and professional vendors to whom disclosure is
24 reasonably necessary for this litigation;

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

3 (g) Any person who is an author, original source of information, addressee, or
4 intended recipient of, or who previously had access to, the Confidential Information or
5 Confidential Item;

6 (h) Potential lay witnesses to whom disclosure is reasonably necessary and who
7 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

8 (i) Any other person as to whom the Party that designated the document or
9 information as "Confidential" has consented to disclosure in advance; and

10 (j) Such other persons as the Parties may agree or may be ordered by the Court.

11 7.3 Prior to disclosure of any material designated "Confidential" to any person
12 described in this paragraph 7.2 subsections (g) through (k) hereof, such person shall be given a
13 copy of this Order and shall sign a certification in the form of Exhibit A attached hereto. Such
14 signed and completed certification shall be retained by the attorneys of record for the disclosing
15 Party.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION

18 If a Party is served with a subpoena, government request, regulatory request or
19 a court order issued in other litigation ("Request/Order") that compels disclosure of any
20 information or items designated in this action as "CONFIDENTIAL," that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification
22 shall include a copy of the Request/Order;

23 (b) promptly notify in writing the party who caused the Request/Order to
24 issue that some or all of the material covered by the Request/Order is subject to this Protective
25 Order. Such notification shall include a copy of this Stipulated Protective Order; and

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

28 If the Designating Party timely seeks a protective order, the Party served with

1 the Request/Order shall not produce any information designated in this action as
2 "CONFIDENTIAL" before a determination by the court from which the Request/Order
3 issued, unless the Party has obtained the Designating Party's permission. The Designating
4 Party shall bear the burden and expense of seeking protection in that court of its confidential
5 material, and nothing in these provisions should be construed as authorizing or encouraging a
6 Receiving Party in this action to disobey a lawful directive from another court.

7 XXX
8 |XX
9 /XX
10 XXX PVT

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
14 Non-Party in this action and designated as "CONFIDENTIAL." Such information produced
15 by Non-Parties in connection with this litigation is protected by the remedies and relief
16 provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-
17 Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to
19 produce a 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
- 28 3. make the information requested available for inspection by the Non-

1 Party.

2 (c) In the Non-Party fails to object or seek a protective order from this court
3 within 14 days of receiving the notice and accompanying information, the Receiving Party
4 may produce the Non-Party's confidential information responsive to the discovery request. If
5 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
6 information in its possession or control that is subject to the confidentiality agreement with the
7 Non-Party before a determination by the court¹ Absent a court order to the contrary, the Non-
8 Party shall bear the burden and expense of seeking protection in this court of its Protected
9 Material.

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection, the
22 production of that information will not be presumed to constitute a waiver of any applicable
23 privileges or other protections, and the obligations of the Receiving Parties are those set forth
24 in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
25 whatever procedure may be established in an e-discovery order that provides for production
26 without prior privilege review.

27 _____
28 ¹ The purpose of this provision is to alert the interested parties to the existence of
confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
confidentiality interests in this court.

1 Pursuant to Federal Rule of Evidence 502(d) and (e), the parties hereby agree
2 that if a Producing Party inadvertently produces information or documents that it later discovers,
3 or in good faith later asserts, to be privileged, including but not limited to, the attorney-client
4 privilege or work product doctrine, or is otherwise protected from disclosure, the production of that
5 information will not be presumed to constitute a waiver of any applicable privileges or other
6 protections. In these circumstances, the Producing Party must immediately notify all Parties in
7 writing of the inadvertent production and the basis for the claim of privilege or other protection
8 from production and request in writing the return or confirmed destruction of the privileged or
9 protected information. Within five (5) days of receiving such notification, and in compliance with
10 the Receiving Parties' ethical obligations under the law, all Receiving Parties who have not already
11 reviewed such materials or who have reviewed the materials but do not contest the applicability of
12 the privilege asserted must return or confirm destruction of all such materials, including copies
13 and/or summaries thereof. However, should a Receiving Party contest the applicability of a
14 privilege asserted with respect to an inadvertently produced document which the Receiving Party
15 already had reviewed prior to receipt of the inadvertent production notification, the Receiving
16 Party may temporarily retain one copy of the document or documents at issue, segregated and not
17 further copied or disseminated, for the sole purpose of contesting the applicability of the privilege
18 asserted with the Court. In the event of such a challenge, the contesting party will have the burden
19 of making an appropriate motion to the Court within ten (10) days of receiving such notification,
20 and obtaining a hearing upon such motion. At such hearing, the Producing Party shall have the
21 burden of establishing the need for the document's confidential or privileged status. Pending a
22 determination from the Court, the inadvertently produced document at issues shall be treated as
23 Confidential in accordance with the Producing Party's designation pursuant to this Order. Within
24 two (2) business days of the issuance of a court order deeming the contested document privileged,
25 however, the Receiving Party must return or confirm destruction of all such materials, including
26 copies and/or summaries thereof.

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person by mistake or in any circumstances not authorized under this

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

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to disclosing or
11 producing any information or item on any ground not addressed in this Stipulated Protective
12 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any
13 of the material covered by this Protective Order.

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

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

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

13

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15

16 DATED: November 15, 2010

BROWNE WOODS GEORGE LLP

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Attorneys for Plaintiff

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1 DATED: November 15, 2010

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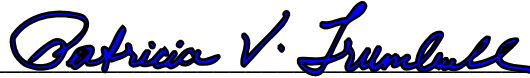
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PRODUCTS INC. & RBS ACCEPTANCE, INC.*

13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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15 DATED: ___ November 24, 2010 _____



16 Patricia V. Trumbull
17 Unites States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGEMENT 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 *Marjorie Brooks v. ComUnity Lending, Inc., et al.*, No. C-07-04501-JF. 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:_____ [printed name]

Signature:_____ [signature]