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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 CELESTINO GARCIA and SAUL L.  
12 ALTAMIRANO

Plaintiffs

13  
14 v.

15 HM ISLAMIC, INC. SHIH-KWEI CHEN aka  
16 SAM CHEN

Defendants

Case No. C **11-04944 PSG**

STIPULATED PROTECTIVE ORDER FOR  
STANDARD LITIGATION

17  
18 1. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production of confidential,  
20 proprietary, or private information for which special protection from public disclosure and from use for  
21 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
22 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
23 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
24 discovery and that the protection it affords from public disclosure and use extends only to the limited  
25 information or items that are entitled to confidential treatment under the applicable legal principles. The  
26 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does  
27 not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set  
28

1 forth the procedures that must be followed and the standards that will be applied when a party seeks  
2 permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or  
5 items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,  
7 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure  
8 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
10 their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or  
14 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
15 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in  
16 this matter.

17 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
18 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in  
19 this action.

20 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
21 does not include Outside Counsel of Record or any other outside counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity  
23 not named as a Party to this action.

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

27 2.10 Party: any party to this action, including all of its officers, directors, employees,  
28 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1           2.11    Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
2 this action.

3           2.12    Professional Vendors: persons or entities that provide litigation support services (e.g.,  
4 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or  
5 retrieving data in any form or medium) and their employees and subcontractors.

6           2.13    Protected Material: any Disclosure or Discovery Material that is designated as  
7 “CONFIDENTIAL.”

8           2.14    Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
9 Party.

10          2.15    Worker Contact Information: any documents or other information produced  
11 containing the name, telephone number, and/or address of any worker, employee and/or  
12 independent contractor of any party hereto may be designated as “Confidential.”

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14    3.       SCOPE

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

26    4.       DURATION

27           Even after final disposition of this litigation, the confidentiality obligations imposed by this Order  
28 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise

1 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this  
2 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all  
3 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any  
4 motions or applications for extension of time pursuant to applicable law.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
7 Party that designates information or items for protection under this Order must take care to limit any such  
8 designation to specific material that qualifies under the appropriate standards. The Designating Party must  
9 designate for protection only those parts of material, documents, items, or oral or written communications  
10 that qualify – so that other portions of the material, documents, items, or communications for which  
11 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

23 Designation in conformity with this Order requires:

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

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

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

22 Transcript pages containing Protected Material must be separately bound by the court  
23 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” as instructed  
24 by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

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26 (c) for information produced in some form other than documentary and for any other  
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
28 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or

1 portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
2 identify the protected portion(s).

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

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10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

16 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's  
17 confidentiality designation must do so in good faith and must begin the process by conferring directly (in  
18 voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating  
19 Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality  
20 designation was not proper and must give the Designating Party an opportunity to review the designated  
21 material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis  
22 for the chosen designation. A challenging Party may proceed to the next stage of the challenge process  
23 only if it has engaged in this meet and confer process first.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
25 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and  
26 in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the initial  
27 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not  
28 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent

1 declaration affirming that the movant has complied with the meet and confer requirements imposed in the  
2 preceding paragraph. Failure by the Designating Party to make such a motion including the required  
3 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
4 designation for each challenged designation. In addition, the Challenging Party may file a motion  
5 challenging a confidentiality designation at any time if there is good cause for doing so, including a  
6 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought  
7 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has  
8 complied with the meet and confer requirements imposed by the preceding paragraph.

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

16 7.       ACCESS TO AND USE OF PROTECTED MATERIAL

17           7.1       Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
18 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,  
19 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of  
20 persons and under the conditions described in this Order. When the litigation has been terminated, a  
21 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

24           7.2       Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the  
25 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
26 item designated “CONFIDENTIAL” only to:

27                   (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
28 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this

1 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
2 as Exhibit A;

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

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

9 (d) the court and its personnel;

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

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

18 (g) the author of the document or the original source of the information.

19 7.3 Disclosure of Worker Contact Information designated

20 “CONFIDENTIAL”:

21 Unless otherwise ordered by the court or agreed to in writing by the parties, a Receiving  
22 Party may use Worker Contact Information (as defined in paragraph 2.15) only to investigate,  
23 prosecute, or defend this litigation. This also includes information regarding any former or  
24 current employer of Plaintiffs. Furthermore, Counsel for the Receiving Party who uses Worker  
25 Contact Information to contact any individual, must:

26 (a) inform the individual that they have the right not to talk to any party and/or their  
27 counsel,

28 (b) terminate contact with any individuals who elect not to talk to a party or their counsel,



- 1 (c) keep a list of those individuals who are contacted,  
2 (d) ensure that the contact information is not used for any purpose outside of this  
3 litigation, and  
4 (e) agree not to solicit in violation of California Law or California Rule of Professional  
5 Conduct 1-400 any individual for the purpose of bringing a claim, complaint, charge, and/or  
6 demand against any party to this litigation.

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8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
9 LITIGATION

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

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

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

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

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

26 The purpose of imposing these duties is to alert the interested parties to the existence of  
27 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
28 protect its confidentiality interests in the court from which the subpoena or order issued.

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

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

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

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

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

make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
7 MATERIAL

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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
17 modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
19 Party waives any right it otherwise would have to object to disclosing or producing any information or  
20 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right  
21 to object on any ground to use in evidence of any of the material covered by this Protective Order.

22 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
23 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
24 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
25 must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed  
26 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
27 Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request  
28 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise

1 entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal  
2 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party  
3 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise  
4 instructed by the court.

5 13. FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 24, 2012 \_\_\_\_\_ /s/ Tomas E. Margain  
Tomas E. Margain  
Attorneys for Plaintiff

DATED: April 24, 2012 \_\_\_\_\_ /s/ Lee Sheldon  
Lee Sheldon  
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 4/25/2012 \_\_\_\_\_ Paul S. Grewal  
Hon. Paul S. Grewal  
United States Magistrate 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 **Garcia v. HM Islamic NDCA Case No. 11-04944 PSG**. 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]