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E-FILED: March 18, 2013

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Plushy Feely Corp. and Counterdefendant
Nina Rappaport-Rowan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PLUSHY FEELY CORP., a California Corporation,)	No.: CV 12 04119 LHK (HRL)
)	
Plaintiff,)	Complaint Filed: August 3, 2012
)	
vs.)	Before the Hon. Lucy H. Koh
)	
RANDY GAUL, an individual,)	STIPULATED PROTECTIVE ORDER
)	(MODIFIED BY THE COURT)
Defendant.)	

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 disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

1 applicable legal principles. The parties further acknowledge, as set forth in Section
2 12.3, below, that this Stipulated Protective Order does not entitle them to file
3 confidential information under seal; Civil Local Rule 79-5 and General Order 62 set
4 forth the procedures that must be followed and the standards that will be applied when
5 a party seeks permission from the court to file material under seal.

6
7 **2. DEFINITIONS**

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation
9 of information or items under this Order.

10 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for protection
12 under Federal Rule of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House
14 Counsel (as well as their support staff).

15 2.4 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 "CONFIDENTIAL."

18 2.5 Disclosure or Discovery Material: all items or information, regardless of
19 the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
24 expert witness or as a consultant in this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a party
4 to this action but are retained to represent or advise a party to this action and have
5 appeared in this action on behalf of that party or are affiliated with a law firm which
6 has appeared on behalf of that party.

7 2.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
15 their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is
17 designated as "CONFIDENTIAL."

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20
21 **3. SCOPE**

22 The protections conferred by this Stipulation and Order cover not only Protected
23 Material (as defined above), but also (1) any information copied or extracted from
24 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
25 Material; and (3) any testimony, conversations, or presentations by Parties or their
26 Counsel that might reveal Protected Material. However, the protections conferred by
27 this Stipulation and Order do not cover the following information: (a) any information
28 that is in the public domain at the time of disclosure to a Receiving Party or becomes

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

8
9 **4. DURATION**

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

18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
17 page that contains protected material. If only a portion or portions of the material on a
18 page qualifies for protection, the Producing Party also must clearly identify the
19 protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

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

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
15 Designating Party's right to secure protection under this Order for such material.
16 Upon timely correction of a designation, the Receiving Party must make reasonable
17 efforts to assure that the material is treated in accordance with the provisions of this
18 Order.

19
20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
17 court intervention, the ~~Designating Party shall file and serve a motion to retain~~ **parties shall comply with the undersigned's Standing Order re**
18 ~~confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5~~ **Civil Discovery Disputes**
19 ~~and General Order 62, if applicable)~~ within 21 days of the initial notice of challenge or
20 within 14 days of the parties agreeing that the meet and confer process will not resolve
21 their dispute, whichever is earlier. ~~Each such motion must be accompanied by a~~ **Any Discovery Dispute Joint Report shall affirm that**
22 ~~competent declaration affirming that the movant has complied with the meet and~~ **have been satisfied.**
23 confer requirements imposed in the preceding paragraph. Failure by the Designating
24 Party to ~~make such a motion including the required declaration~~ **seek judicial intervention** within 21 days (or 14
25 days, if applicable) shall automatically waive the confidentiality designation for each
26 challenged designation. In addition, the Challenging Party may ~~file a motion~~ **seek relief with respect to**
27 ~~challenging~~ a confidentiality designation at any time if there is good cause for doing

1 so, including a challenge to the designation of a deposition transcript or any portions
2 thereof. ~~Any motion brought pursuant to this provision must be accompanied by a~~
3 ~~competent declaration affirming that the movant has complied with the meet and~~
4 ~~confer requirements imposed by the preceding paragraph.~~

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

13 14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

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

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

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
25 otherwise ordered by the court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
27 only to:
28

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

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

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants,
14 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
15 this litigation and who have signed the "Acknowledgment and Agreement to Be
16 Bound" (Exhibit A);

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

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.
25
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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION**

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

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

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

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

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

22
23 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
24 **PRODUCED IN THIS LITIGATION**

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

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

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

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

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

15 (c) If the Non-Party fails to object or seek a protective order from this
16 court within 14 days of receiving the notice and accompanying information, the
17 Receiving Party may produce the Non-Party's confidential information responsive to
18 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
19 Party shall not produce any information in its possession or control that is subject to
20 the confidentiality agreement with the Non-Party before a determination by the court.¹
21 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
22 of seeking protection in this court of its Protected Material. **See Paragraph 14.**

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

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

10
11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

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

23
24 **12. MISCELLANEOUS**

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. Without written permission from the
5 Designating Party or a court order secured after appropriate notice to all interested
6 persons, a Party may not file in the public record in this action any Protected Material.
7 A Party that seeks to file under seal any Protected Material must comply with Civil
8 Local Rule 79-5 and General Order 62. Protected Material may only be filed under
9 seal pursuant to a court order authorizing the sealing of the specific Protected Material
10 at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will
11 issue only upon a request establishing that the Protected Material at issue is privileged,
12 protectable as a trade secret, or otherwise entitled to protection under the law. If a
13 Receiving Party's request to file Protected Material under seal pursuant to Civil Local
14 Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party
15 may file the information in the public record pursuant to Civil Local Rule 79-5(e)
16 unless otherwise instructed by the court.

17
18 **13. FINAL DISPOSITION**

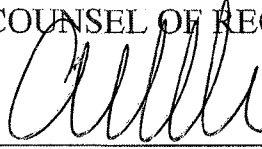
19 Within 60 days after the final disposition of this action, as defined in paragraph
20 4, each Receiving Party must return all Protected Material to the Producing Party or
21 destroy such material. As used in this subdivision, "all Protected Material" includes all
22 copies, abstracts, compilations, summaries, and any other format reproducing or
23 capturing any of the Protected Material. Whether the Protected Material is returned or
24 destroyed, the Receiving Party must submit a written certification to the Producing
25 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
26 deadline that (1) identifies (by category, where appropriate) all the Protected Material
27 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
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1 any copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
3 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
4 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
5 expert reports, attorney work product, and consultant and expert work product, even if
6 such materials contain Protected Material. Any such archival copies that contain or
7 constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION).

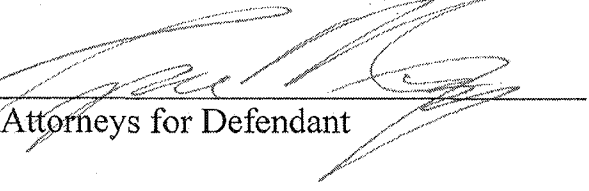
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10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: 3-18-13

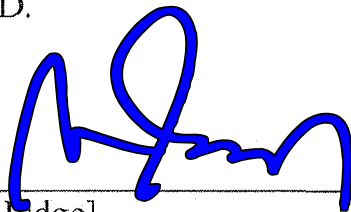

12 _____
13 Attorneys for Plaintiff

14 DATED: 3/15/13


15 _____
16 Attorneys for Defendant

17 AS MODIFIED BY THE COURT,
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19
20 DATED: March 18, 2013


21 _____
22 ~~[Name of Judge]~~
23 ~~United States District/Magistrate Judge~~
24 Howard R. Lloyd
25 United States Magistrate Judge

26
27
28
**** 14. In the event of any discovery or disclosure dispute, the parties and any affected non-parties shall comply with the undersigned's Standing Order re Civil Discovery Disputes.**

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Northern District of California on [date] in
7 the case of Plush Feely Corp. v. Gaul, CV 12 4119 LHK (HRL). I agree to comply
8 with and to be bound by all the terms of this Stipulated Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose
11 in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this
13 Order.

14 I further agree to submit to the jurisdiction of the United States District
15 Court for the Northern District of California for the purpose of enforcing the terms of
16 this Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name]
19 of _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 [printed name]

27 Signature: _____

28 [signature]