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8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11
 12 ASHOK BABU, ROBERT BELL,
 IBRAHIM KEEGAN-HORNSBY,
 13 DEMAREA JOHNSON, BRANDON
 JONES, STEPHANIE NAVARRO,
 14 ROBERTO SERRANO, and
 ALEXANDER WASHINGTON on behalf
 15 of themselves and all others similarly
 situated,

16 Plaintiffs,

17 v.

18 COUNTY OF ALAMEDA; GREGORY J.
 19 AHERN in his official capacity as Sheriff
 of the Alameda County Sheriff's Office;
 20 CAROL BURTON in her official capacity
 as Interim Director of the Alameda County
 21 Behavioral Health Care Services Agency;
 and DOES 1 to 20, inclusive.,

22 Defendants.
 23

Case No. 4:18-CV-07677

STIPULATED PROTECTIVE ORDER

Judge: Hon. Nathanael Cousins

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

14 2. DEFINITIONS

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

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
18 is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c), including, but not limited to, information protected
20 from disclosure by the Health Insurance Portability and Accountability Act of 1996, 45
21 C.F.R. §§ 160, *et. seq.* (“HIPAA”).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
23 (as well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or items
25 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other
28 things, testimony, transcripts, and tangible things), that are produced or generated in

1 disclosures or responses to discovery in this matter.

2 2.6 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
4 expert witness or as a consultant in this action.

5 2.7 House Counsel: attorneys who are employees of a party to this action.
6 House Counsel does not include Outside Counsel of Record or any other outside counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
10 this action but are retained to represent or advise a party to this action and have appeared
11 in this action on behalf of that party or are affiliated with a law firm which has appeared on
12 behalf of that party.

13 2.10 Party: any party to this action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their support
15 staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
21 their employees and subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated
23 as “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected
28 Material (as defined above), but also (1) any information copied or extracted from

1 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
2 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
3 that might reveal Protected Material. However, the protections conferred by this
4 Stipulation and Order do not cover the following information: (a) any information that is
5 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
6 public domain after its disclosure to a Receiving Party as a result of publication not
7 involving a violation of this Order, including becoming part of the public record through
8 trial or otherwise; and (b) any information known to the Receiving Party prior to the
9 disclosure or obtained by the Receiving Party after the disclosure from a source who
10 obtained the information lawfully and under no obligation of confidentiality to the
11 Designating Party. Any use of Protected Material at trial shall be governed by a separate
12 agreement or order.

13 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

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

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that
2 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
3 to unnecessarily encumber or retard the case development process or to impose
4 unnecessary expenses and burdens on other parties) expose the Designating Party to
5 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 or
11 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
12 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 proceedings),
16 that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains
17 protected material. If only a portion or portions of the material on a page qualifies for
18 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
19 making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents or materials available
21 for 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 deemed
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
25 copied and produced, the Producing Party must determine which documents, or portions
26 thereof, qualify for protection under this Order. Then, before producing the specified
27 documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
28 that contains Protected Material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

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

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

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

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
25 process by providing written notice of each designation it is challenging and describing the
26 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
27 written notice must recite that the challenge to confidentiality is being made in accordance
28 with this specific paragraph of the Protective Order. The parties shall attempt to resolve

1 each challenge in good faith and must begin the process by conferring directly (in voice to
2 voice dialogue; other forms of communication are not sufficient) within 14 days of the date
3 of service of notice. In conferring, the Challenging Party must explain the basis for its
4 belief that the confidentiality designation was not proper and must give the Designating
5 Party an opportunity to review the designated material, to reconsider the circumstances,
6 and, if no change in designation is offered, to explain the basis for the chosen designation.
7 A Challenging Party may proceed to the next stage of the challenge process only if it has
8 engaged in this meet and confer process first or establishes that the Designating Party is
9 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, the Designating Party shall file and serve a motion to retain confidentiality
12 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
13 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
14 that the meet and confer process will not resolve their dispute, whichever is earlier. Each
15 such motion must be accompanied by a competent declaration affirming that the movant
16 has complied with the meet and confer requirements imposed in the preceding paragraph.
17 Failure by the Designating Party to make such a motion including the required declaration
18 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
19 designation for each challenged designation. In addition, the Challenging Party may file a
20 motion challenging a confidentiality designation at any time if there is good cause for
21 doing so, including a challenge to the designation of a deposition transcript or any portions
22 thereof. Any motion brought pursuant to this provision must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and confer
24 requirements imposed by the preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
27 harass or impose unnecessary expenses and burdens on other parties) may expose the
28 Challenging Party to sanctions. Unless the Designating Party has waived the

1 confidentiality designation by failing to file a motion to retain confidentiality as described
2 above, all parties shall continue to afford the material in question the level of protection to
3 which it is entitled under the Producing Party’s designation until the court rules on the
4 challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

15 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
17 may disclose any information or item designated “CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as
19 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
20 to disclose the information for this litigation and who have signed the “Acknowledgment
21 and Agreement to Be Bound” that is attached hereto as **Exhibit A**;

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

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

28 (d) the court and its personnel;

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

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

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

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
14 OTHER LITIGATION

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

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

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

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

26 If the Designating Party timely seeks a protective order, the Party served
27 with the subpoena or court order shall not produce any information designated in this
28 action as “CONFIDENTIAL” before a determination by the court from which the

1 subpoena or order issued, unless the Party has obtained the Designating Party's
2 permission. The Designating Party shall bear the burden and expense of seeking protection
3 in that court of its confidential material – and nothing in these provisions should be
4 construed as authorizing or encouraging a Receiving Party in this action to disobey a
5 lawful directive from another court.

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

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

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

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

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

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

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

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

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

25 12. MISCELLANEOUS

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

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this

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

5 12.3 Filing Protected Material. Without written permission from the Designating
6 Party or a court order secured after appropriate notice to all interested persons, a Party may
7 not file in the public record in this action any Protected Material. A Party that seeks to file
8 under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
9 Material may only be filed under seal pursuant to a court order authorizing the sealing of
10 the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order
11 will 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 Rule
14 79-5(d) is denied by the court, then the Receiving Party may file the information in the
15 public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

16 12.4 Order to Disclose. The parties agree that this court order authorizes the
17 disclosure of documents containing information protected by HIPAA, which shall be
18 subject to this protective order.

19 13. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in paragraph 4,
21 each Receiving Party must return all Protected Material to the Producing Party or destroy
22 such material. As used in this subdivision, "all Protected Material" includes all copies,
23 abstracts, compilations, summaries, and any other format reproducing or capturing any of
24 the Protected Material.

25 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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1 DATED: May 22, 2019

Respectfully submitted,

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ROSEN BIEN GALVAN & GRUNFELD LLP

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By: /s/ Ernest Galvan

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Ernest Galvan

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Attorneys for Plaintiffs

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8 DATED: May 22, 2019

Respectfully submitted,

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BURKE, WILLIAMS & SORENSEN, LLP

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By: /s/ Gregory B. Thomas

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Gregory B. Thomas, Esq.

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14 DATED: May 22, 2019

Respectfully submitted,

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HANSON BRIDGETT LLP

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By: /s/ Samantha D. Wolff

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Paul B. Mello, Esq.

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Samantha D. Wolff, Esq.

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Attorneys for Defendants

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PURSUANT TO STIPULATION; IT IS SO ORDERED

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DATED: May 29, 2019

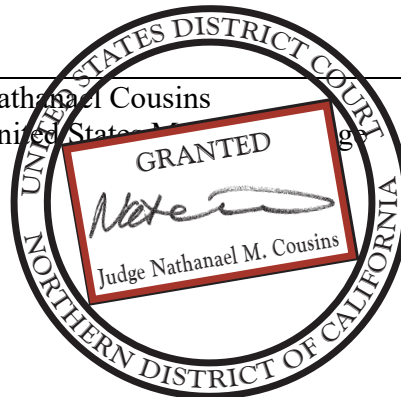
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Nathanael Cousins

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United States District Court

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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 ASHOK BABU, ROBERT BELL, IBRAHIM KEEGAN-HORNSBY, DEMAREA JOHNSON, BRANDON JONES, STEPHANIE NAVARRO, ROBERTO SERRANO, AND ALEXANDER WASHINGTON on behalf of themselves and all others similarly situated v. COUNTY OF ALAMEDA, et. al. Case No. 4:18-CV-07677-NC. 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: _____