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8	IN THE UNITED STATES DISTRICT COURT
9 10	FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 11	WESTERN DIVISION
12	CDVTEV CMDU
13	CRYTEK GMBH,) Case No. 2:17-cv-08937 DMG (FFMx)
14	Plaintiff,)) PROTECTIVE ORDER PURSUANT
15	v.) TO STIPULATION)
16	CLOUD IMPERIUM GAMES CORP. and)ROBERTS SPACE INDUSTRIES CORP.,)
17) Defendants.
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20	1. A. <u>PURPOSES AND LIMITATIONS</u>
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22	Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure

23 and from use for any purpose other than prosecuting this litigation may be warranted. 24 Accordingly, the parties hereby stipulate to and petition the Court to enter the 25 following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that 27 the protection it affords from public disclosure and use extends only to the limited 28 information or items that are entitled to confidential treatment under the applicable

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

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B. GOOD CAUSE STATEMENT

This action is likely to involve source code, customer and pricing lists, licensing 7 agreements with third parties, and other valuable research, development, commercial, 8 financial, technical and/or proprietary information for which special protection from 9 public disclosure and from use for any purpose other than prosecution of this action 10 is warranted. Such confidential and proprietary materials and information consist of, 11 among other things, confidential business or financial information, information 12 regarding confidential business practices, licensing agreements with third parties, or 13 other confidential research, development, or commercial information, information 14 15 otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, 16 or common law. Accordingly, to expedite the flow of information, to facilitate the 17 prompt resolution of disputes over confidentiality of discovery materials, to 18 adequately protect information the parties are entitled to keep confidential, to ensure 19 that the parties are permitted reasonable necessary uses of such material in preparation 20 21 for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this 22 It is the intent of the parties that information will not be designated as 23 matter. confidential for tactical reasons and that nothing be so designated without a good faith 24 belief that it has been maintained in a confidential, non-public manner, and there is 25 good cause why it should not be part of the public record of this case. 26

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2. <u>DEFINITIONS</u>

2.1 <u>Action</u>: this pending federal law suit.

2.2 <u>Challenging Party</u>: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 <u>"CONFIDENTIAL" Information or Items</u>: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 <u>"CONFIDENTIAL – SOURCE CODE" Information or Items:</u> computer
source code and/or live data (that is, data as it exists residing in a database or
databases) in a form suitable for input to a preprocessor, assembler, compiler, or
translator (including any comments therein) ("Source Code Material") that qualify for
protection under Federal Rule of Civil Procedure 26(c) and as specified above in the
Good Cause Statement, and which comprises or includes confidential, proprietary, or
trade secret Source Code Material.

16 2.5 <u>Counsel</u>: Outside Counsel of Record and House Counsel (as well as their
17 support staff).

2.6 <u>Designating Party</u>: a Party or Non-Party that designates information or
 items that it produces in disclosures or in responses to discovery as
 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL –
 SOURCE CODE."

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

26 2.8 <u>Expert</u>: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
28 an expert witness or as a consultant in this Action.

2.9 <u>"HIGHLY CONFIDENTIAL" Information or Items</u>: highly sensitive information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) and as specified above in the Good Cause Statement, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 <u>House Counsel</u>: attorneys who are employees of a party to this Action.House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 <u>Non-Party</u>: any natural person, partnership, corporation, association, or
 other legal entity not named as a Party to this action.

2.12 <u>Outside Counsel of Record</u>: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

2.13 <u>Party</u>: any party to this Action, including all of its officers, directors,
employees, consultants, retained experts, and Outside Counsel of Record (and their
support staffs).

19 2.14 <u>Producing Party</u>: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

2.15 <u>Professional Vendors</u>: persons or entities that provide litigation support
 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 and their employees and subcontractors.

25 2.16 <u>Protected Material</u>: any Disclosure or Discovery Material that is
 26 designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or
 27 "CONFIDENTIAL – SOURCE CODE."

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2.17 <u>Receiving Party</u>: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

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

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

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4. <u>DURATION</u>

Even after final disposition of this litigation, the confidentiality obligations 14 15 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be 16 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with 17 or without prejudice; and (2) final judgment herein after the completion and 18 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, 19 including the time limits for filing any motions or applications for extension of time 20 21 pursuant to applicable law.

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5.

DESIGNATING PROTECTED MATERIAL

5.1 <u>Exercise of Restraint and Care in Designating Material for Protection.</u>
Each Party or Non-Party that designates information or items for protection under this
Order must take care to limit any such designation to specific material that qualifies
under the appropriate standards. The Designating Party must designate for protection
only those documents, items, or oral or written communications that qualify so that

other material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

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Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic
documents, but excluding transcripts of depositions or other pretrial or trial
proceedings), that the Producing Party affix at a minimum, the legend
"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL –
SOURCE CODE" (hereinafter "CONFIDENTIALITY Legend"), to each document
that contains protected material.

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or

portions thereof, qualify for protection under this Order. Then, before producing the
 specified documents, the Producing Party must affix the appropriate
 CONFIDENTIALITY Legend to each page that contains Protected Material.

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for
 any other tangible items, that the Producing Party affix in a prominent place on the
 exterior of the container or containers in which the information is stored the
 appropriate CONFIDENTIALITY Legend.

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

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CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 <u>Timing of Challenges</u>. Any Party or Non-Party may challenge a
designation of confidentiality at any time that is consistent with the Court's
Scheduling Order.

6.2 <u>Meet and Confer</u>. The Challenging Party shall initiate the dispute
 resolution process under Local Rule 37.1 et seq.

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

material in question the level of protection to which it is entitled under the ProducingParty's designation until the Court rules on the challenge.

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7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 <u>Basic Principles</u>. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this Action any Protected Material. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless 17 otherwise ordered by the court or permitted in writing by the Designating Party, a 18 Receiving disclose information designated 19 Party may any or item "CONFIDENTIAL" only to: 20

(a) the Receiving Party's Outside Counsel of Record in this Action, as well
as employees of said Outside Counsel of Record to whom it is reasonably necessary
to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the
Receiving Party to whom disclosure is reasonably necessary for this Action;

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

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- (d) the court and its personnel;
- (e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

(h) during their depositions, witnesses and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

any mediator or settlement officer, and their supporting personnel, (i) 17 mutually agreed upon by any of the parties engaged in settlement discussions. 18

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

(a) the Receiving Party's Outside Counsel of Record in this Action, as well 23 as employees of said Outside Counsel of Record to whom it is reasonably necessary 24 to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom 26 disclosure is reasonably necessary for this Action and who have signed the 27 "Acknowledgment and Agreement to Be Bound" (Exhibit A); 28

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(c) the court and its personnel;

(d) court reporters and their staff;

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

any mediator or settlement officer, and their supporting personnel, (f) mutually agreed upon by any of the parties engaged in settlement discussions.

Disclosure of "CONFIDENTIAL - SOURCE CODE" Information or 7.4 7 Items. The Parties shall meet and confer and enter into a separate agreement and/or 8 stipulated protective order, incorporating by reference the terms herein, regarding the 9 procedures and protocol for the production and/or inspection of information 10 designated as "CONFIDENTIAL - SOURCE CODE." Protected Material designated as "CONFIDENTIAL - SOURCE CODE" shall be subject to all of the protections 12 afforded to "HIGHLY CONFIDENTIAL" information and may be disclosed only to 13 the individuals to whom "HIGHLY CONFIDENTIAL" information may be 14 15 disclosed, as set forth in Paragraph 7.3.

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

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL -SOURCE CODE," that Party must:

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

(b) promptly notify in writing the party who caused the subpoena or order 24 to issue in the other litigation that some or all of the material covered by the subpoena 25 or order is subject to this Protective Order. Such notification shall include a copy of 26 this Stipulated Protective Order; and 27

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

- If the Designating Party timely seeks a protective order, the Party served with 3 4 the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL -5 SOURCE CODE," before a determination by the court from which the subpoena or 6 order issued, unless the Party has obtained the Designating Party's permission. The 7 Designating Party shall bear the burden and expense of seeking protection in that court 8 of its confidential material and nothing in these provisions should be construed as 9 authorizing or encouraging a Receiving Party in this Action to disobey a lawful 10 directive from another court. 11
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9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL - SOURCE CODE." Such information produced by Non-Parties in connection with this litigation is protected by the 18 remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections. 20

21 (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 22 subject to an agreement with the Non-Party not to produce the Non-Party's 23 confidential information, then the Party shall: 24

(1) promptly notify in writing the Requesting Party and the Non-Party 25 that some or all of the information requested is subject to a confidentiality agreement 26 with a Non-Party; 27

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

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

(c) If the Non-Party fails to 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. 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.

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UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL 10.

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed 16 Protected Material to any person or in any circumstance not authorized under this 17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in 18 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts 19 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or 20 persons to whom unauthorized disclosures were made of all the terms of this Order, 22 and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A. 23

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11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain 27 inadvertently produced material is subject to a claim of privilege or other protection, 28

the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

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12. **MISCELLANEOUS**

Right to Further Relief. Nothing in this Order abridges the right of any 12.1 person to seek its modification by the Court in the future. 12

12.2 Right to Assert Other Objections. By stipulating to the entry of this 13 Protective Order no Party waives any right it otherwise would have to object to 14 15 disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any 16 ground to use in evidence of any of the material covered by this Protective Order. 17

12.3 Filing Protected Material. A Party that seeks to file under seal any 18 Protected Material must comply with Civil Local Rule 79-5. Protected Material may 19 only be filed under seal pursuant to a court order authorizing the sealing of the specific 20 21 Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public 22 record unless otherwise instructed by the court. 23

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13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 26 days of a written request by the Designating Party, each Receiving Party must return 27 all Protected Material to the Producing Party or destroy such material. As used in this 28

subdivision, "all Protected Material" includes all copies, abstracts, compilations, 1 2 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party 3 4 must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by 5 category, where appropriate) all the Protected Material that was returned or destroyed 6 and (2) affirms that the Receiving Party has not retained any copies, abstracts, 7 compilations, summaries or any other format reproducing or capturing any of the 8 9 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing 10 11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such 12 materials contain Protected Material. Any such archival copies that contain or 13 constitute Protected Material remain subject to this Protective Order as set forth in 14 15 Section 4 (DURATION).

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17 14. Any violation of this Order may be punished by any and all appropriate
18 measures including, without limitation, contempt proceedings and/or monetary
19 sanctions.

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21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

The Honorable Frederick F. Mumm United States Magistrate Judge

DATED: October 2, 2019

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1	EXHIBIT A
2	ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
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4	I, [print or type full name], of
5	[print or type full address], declare under penalty of perjury that
6	I have read in its entirety and understand the Stipulated Protective Order that was
7	issued by the United States District Court for the Central District of California on
8	in the case of Crytek GmbH v. Cloud Imperium Games Corp. et al. Case
9	No. 2:17-cv-08937-DMG-FFM . I agree to comply with and to be bound by all the
10	terms of this Stipulated Protective Order and I understand and acknowledge that
11	failure to so comply could expose me to sanctions and punishment in the nature of
12	contempt. I solemnly promise that I will not disclose in any manner any information
13	or item that is subject to this Stipulated Protective Order to any person or entity except
14	in strict compliance with the provisions of this Order.
15	I further agree to submit to the jurisdiction of the United States District Court for the
16	Central District of California for the purpose of enforcing the terms of this Stipulated
17	Protective Order, even if such enforcement proceedings occur after termination of this
18	action. I hereby appoint [print or type full name] of
19	[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:
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27	Signature:
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