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 7 WESTERN ASSET MANAGEMENT COMPANY

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 GENESEE COUNTY EMPLOYEES'
 RETIREMENT SYSTEM, et al., on behalf
 12 of themselves and all others similarly
 situated,

13 Plaintiffs,

14 v.

15 THORNBURG MORTGAGE, INC., et al.

16 Defendants.

) Case No. CV 12-4086 SVW-CWx
) [Action Pending in United States
) District Court, District of New Mexico,
) Case No. 1:09-cv-00300-JB-KBM]

) **PROTECTIVE ORDER FOR**
) **RODUCTION OF CONFIDENTIAL**
) **MATERIAL BY THIRD PARTY**
) **WESTERN ASSET**
) **MANAGEMENT COMPANY**

18 _____
 19 WESTERN ASSET MANAGEMENT
 COMPANY,

20 Third Party.
 21 _____

) ***PLEASE NOTE CHANGES MADE***
) ***BY THE COURT***

1 Upon consideration of the Stipulated Protective Order entered into between the
2 parties and third party Western Asset, filed concurrently herewith, and for good cause
3 shown, the Court **GRANTS** the Protective Order as follows:

4
5 **1. PURPOSES AND LIMITATIONS**

6 Subpoenas issued by the Central District of California served on third party
7 Western Asset Management Company (“Western Asset”) in connection with *Genesee*
8 *County Employees’ Retirement System et al. v. Thornburg Mortgage, Inc. et al.*, pending
9 in United States District Court, District of New Mexico, Case No. 1:09-cv-00300-JB-
10 KBM may call for production of, or testimony about, proprietary and other confidential
11 research, development, or commercial information within the meaning of Fed. R. Civ.
12 P. 26(c), or other private or competitively sensitive information for which special
13 protection from public disclosure and from use for any purpose other than prosecuting
14 this litigation is warranted. Accordingly, the parties and Western Asset hereby stipulate to
15 and petition the Court to enter the following Stipulated Protective Order pursuant to Fed.
16 R. Civ. P. 26(c). The following procedures shall govern the production and exchange of
17 all WA Discovery Material (as defined in § 2.5 below) by and among the parties in the
18 Action. Western Asset acknowledges that this Order does not confer blanket protections
19 on all discovery.

20 **2. DEFINITIONS**

21 2.1 Court and Clerk of the Court refer to the United States District
22 Court for the Central District of California.

23 2.2 Action refers to *Genesee County Employees’ Retirement System et*
24 *al. v. Thornburg Mortgage, Inc., et al.*, pending in United States District Court, District
25 of New Mexico, Case No. 1:09-cv-00300-JB-KBM.

26 2.3 Proceedings Under the Order refer to motions or other proceedings
27 in this Court pursuant to the Order.

28 2.4 **Party:** any party to the Action.

1 2.5 **WA Discovery Material:** all items or information, regardless of
2 the medium or manner generated, stored, or maintained, including, among other things,
3 documents, testimony, interrogatory responses, transcripts, depositions and depositions
4 exhibits, responses to requests to admit, recorded or graphic matter, electronically
5 stored information, tangible things, and/or other information produced, given,
6 exchanged by, or obtained from Western Asset in connection with discovery in this
7 matter.

8 2.6 **WA Confidential Material:** Western Asset may, subject to the
9 provisions of this Order, designate as “WA Confidential” any WA Discovery Material
10 that Western Asset reasonably and in good faith believes constitutes and reveals
11 confidential trade secrets, proprietary business information or confidential personal
12 information that requires the protections provided in this Order.

13 2.7 **WA Highly Confidential Material :** Western Asset may, subject to
14 the provisions of this Order, designate any WA Discovery Material as “WA Highly
15 Confidential,” subject to the provisions of this Order, if Western Asset reasonably and
16 in good faith believes those WA Discovery Materials constitute and reveal confidential
17 trade secrets, non-public personal and customer information concerning individuals or
18 other entities (including, but not limited to, social security numbers, home telephone
19 numbers and addresses, tax returns, and medical, credit and banking information) or
20 other sensitive confidential business or financial information, whose disclosure beyond
21 that permitted by this Order reasonably could result in: (i) substantial competitive,
22 commercial or personal harm to Western Asset or its clients or customers; (ii) the
23 public disclosure of documents, information or materials that may subject Western
24 Asset to adverse action by any regulatory authority to which it is subject; or (iii) a
25 meaningful risk of immediate or imminent harm to a party in the above-referenced
26 Action.

27 2.8 **Producing Party:** Western Asset.
28

1 2.9 **Receiving Party:** any Party or non-party that receives WA
2 Discovery Material from Producing Party.

3 2.10 **Designating Party:** any Party or non-party that designates WA
4 Discovery Material as “WA Confidential” or “WA Highly Confidential.”

5 2.11 **WA Protected Material:** any WA Discovery Material that is
6 designated as “WA Confidential” or “WA Highly Confidential.”

7 2.12 **Outside Counsel:** attorneys, along with their paralegals and
8 other support personnel assisting with this litigation, including but not limited to the
9 regular and temporary employees and Professional Vendors of such outside counsel
10 assisting in the conduct of the Action, who are not employees of a Party but who are
11 retained to represent or advise a Party in this Action.

12 2.13 **In-House Legal Personnel:** attorneys, paralegals, and other
13 personnel employed by a Party to perform legal functions who are responsible for
14 overseeing this litigation for the Party, including but not limited to the regular and
15 temporary employees and Professional Vendors of such in-house legal personnel
16 assisting in the conduct of the Action.

17 2.14 **Counsel (without qualifier):** Outside Counsel and In-House Legal
18 Personnel (as well as their support staffs, including but not limited to attorneys,
19 paralegals, secretaries, and law clerks) as defined in §§ 2.9 and 2.10.

20 2.15 **Expert and/or Consultant:** a person with specialized knowledge
21 or experience in a matter pertinent to the litigation, along with his or her employees,
22 staff members, and support personnel, who has been retained by a Party or its Counsel
23 to serve as an expert witness or as a consultant in this Action, and who is not currently
24 an employee of a Party and who, at the time of retention, is not anticipated to become
25 an employee of a Party. This definition includes a professional jury or trial consultant
26 retained in connection with this Action.

27 2.16 **Professional Vendors:** persons or entities that provide
28 litigation support services (*e.g.*, photocopying; videotaping; translating; preparing

1 exhibits or demonstrations; organizing, storing, or processing data in any form or
2 medium; etc.) and their employees and subcontractors.

3 **3. SCOPE**

4 This Order shall not be construed to cause any Counsel to produce, return,
5 and/or destroy their own attorney work product, or the work product of their co-
6 counsel.

7 **4. DURATION**

8 The confidentiality obligations imposed by this Order shall remain in effect
9 until the Designating Party agrees otherwise in writing or this Court orders otherwise.
10 The termination of the Action shall not relieve any person to whom WA Protected
11 Material has been provided or disclosed from the obligations of this Order, unless
12 Western Asset agrees in writing. Any Party or Western Asset may seek leave to
13 enforce the Order after the termination of the Action.

14 **5. DESIGNATING PROTECTED MATERIAL**

15 **5.1 Exercise of Restraint and Care in Designating Material for**
16 **Protection:** Western Asset must take care to limit designations to specific material
17 that qualifies under the appropriate standards and avoid indiscriminate designations.
18 The designation by Designating Party of any WA Discovery Material as “WA
19 Confidential” or “WA Highly Confidential” shall constitute a representation that there
20 is a good faith basis for such designation.

21 If it comes to Designating Party’s attention that material that it designated
22 for protection does not qualify for protection, or do not qualify for the level of
23 protection initially asserted, Designating Party must promptly notify all Parties that it is
24 withdrawing or changing the mistaken designation.

25 **5.2 Manner and Timing of Designations:** Except as otherwise
26 provided in this Order (*see, e.g.*, §§5.2(b), 5.3, and 5.4), or as otherwise stipulated or
27 ordered, material that qualifies for protection under this Order must be clearly so
28 designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) **for information in documentary form (including transcripts of**
3 **depositions taken in other proceedings)**, that the Producing Party affix the legend
4 “WA CONFIDENTIAL” or “WA HIGHLY CONFIDENTIAL” on the first page of a
5 document or on the relevant page(s) of the document.

6 (b) **for deposition transcripts and/or exhibits**, that, with respect to
7 any deposition at which counsel for Western Asset appears on behalf of a witness who
8 is a current or former director, officer or employee of Western Asset, Western Asset
9 shall designate any portion of the testimony as “WA Confidential” or “WA Highly
10 Confidential” either on the record before the deposition is concluded, or in writing on or
11 before the later of (i) thirty (30) days after the final transcript is received, or (ii) the date by
12 which any review by the witness and corrections to the transcript are to be completed
13 under Fed. R. Civ. P. 30(e). Only those portions of such testimony that are designated for
14 protection in accordance with the preceding sentence shall be covered by the provisions of
15 this Order and if testimony is not designated within the prescribed time period, then
16 such testimony shall not be deemed WA Confidential or WA Highly Confidential
17 except as ordered by the Court.. With respect to all depositions at which counsel for
18 Western Asset does not appear, any Party who seeks to use WA Protected Material at a
19 deposition or hearing has the burden of identifying the information as WA Protected
20 Material, designating the applicable transcript portion and exhibits at a deposition or
21 hearing as WA Protected Material, and notifying any Parties or non-parties that are
22 affected by the designation within a reasonable time of the designation of WA
23 Protected Material. The entire testimony of all depositions involving WA Protected
24 Material shall be deemed to have been designated WA Highly Confidential until the time
25 within_which the transcript may be designated as WA Confidential or WA Highly
26 Confidential has elapsed.

27 (c) **for information produced in electronic, audio, or video format,**
28 **and for any other tangible items**, that the Producing Party affix in a prominent place

1 on the exterior of the container or containers in which the information or item is stored
2 the legend “WA CONFIDENTIAL” or “WA HIGHLY CONFIDENTIAL.”

3 **5.3 Inadvertent Failures to Designate:** Should Producing Party
4 discover that it produced material that it considers to be WA Protected Material but
5 was not designated as WA Protected Material or that it produced material that was
6 designated as WA Protected Material but had designated that WA Protected Material
7 in the incorrect category of WA Protected Material, the Producing Party may
8 notify all Parties, in writing, of the error and identify (by bates number or other
9 individually identifiable information) the affected documents and their new
10 designation or re-designation. Thereafter, the material so designated or re-designated
11 will be treated as WA Protected Material, in conformity with the new designation or
12 re-designation. Promptly after providing such notice, the Producing Party shall provide
13 re-labeled copies of the material to each Party reflecting the change in designation.
14 The Party will replace the incorrectly designated material with the newly designated
15 material, will destroy the incorrectly designated material, will provide the newly
16 designated material to each non-party to whom that Party previously provided the
17 incorrectly designated material and will instruct each such non-party to destroy the
18 incorrectly designated material. If corrected, an inadvertent failure to designate
19 qualified material as “WA Confidential” or “WA Highly Confidential” does not
20 waive the Producing Party’s right to secure protection under this Order for such
21 material.

22 **5.4 Increasing the Designation for Material Produced by Other**
23 **Parties:** Subject to the standards set forth in §5.1 of the Stipulated Protective Order
24 entered on March 1, 2012 in the Action, a Party may change the designation of any
25 WA Discovery Material produced by Producing Party without a designation to a
26 designation of “WA Confidential” or “WA Highly Confidential,” or designate any WA
27 Discovery Material produced as “WA Confidential” as “WA Highly Confidential,”
28 provided that said WA Discovery Material contains the upward Designating Party’s

1 own Confidential or Highly Confidential Material. Any such increase in the designation
2 of a document shall be made within sixty (60) days of the date of its production, unless
3 good cause is shown for a later increase in the designation.

4 Upward designations shall be accomplished by providing written notice to all
5 Parties identifying (by bates number or other individually identifiable information) the WA
6 Discovery Material whose designation is to be increased. Promptly after providing such
7 notice, the upward Designating Party shall provide re-labeled copies of the material to each
8 Receiving Party reflecting the new designation. The Receiving Party will replace the
9 incorrectly designated material with the newly designated material and will destroy the
10 incorrectly designated material. Any Party may object to the upward designation of
11 WA Discovery Material pursuant to the procedures set forth in §6 (CHALLENGING
12 CONFIDENTIALITY DESIGNATIONS) of the Stipulated Protective Order entered on
13 March 1, 2012 in the Action. The upward Designating Party shall bear the burden of
14 establishing the basis for the increased designation.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 **Timing of Challenges:** The close of expert discovery shall be the
17 final day on which a party may initiate a challenge to Western Asset's confidentiality
18 designation.

19 6.2 **Meet and Confer:** In the event that any Party wishes to challenge
20 the designation of material or testimony as WA Confidential or WA Highly
21 Confidential, the Party shall give written notice of the challenge to the parties and to
22 Western Asset. Plaintiffs shall be granted only one opportunity to challenge Western
23 Asset's designations and Defendants shall be granted only one opportunity, such that
24 only two notices of challenge, at most, are served in the course of the Action with
25 respect to the entirety of the WA Discovery Material. However, if Western Asset
26 produces additional WA Protected Material and a side (Plaintiffs or Defendants), has
27 already exercised a challenge to previously-produced WA Protected Material, that side
28 shall have the right to challenge the subsequently produced WA Protected Material.

1 Each side shall use best efforts to avoid multiple challenges. Written notice to Western
2 Asset shall be given by email directed to all the following email addresses:

3 To Stephen Venable at Western Asset Management Company

4 Stephen.Venable@westernasset.com

5 -and-

6 To Ralph F. Hirschmann and Belinda M. Vega at Hirschmann Law
7 Group, P.C.

8 rfh@hirschmannlaw.com

9 bmv@hirschmannlaw.com

10
11 6.3 A Party that elects to initiate a challenge to Producing Party's
12 confidentiality designation must do so in good faith and must begin the process by
13 notifying the Producing Party and the Parties in writing of its challenge and identifying
14 the challenged material. The Producing Party shall, within fourteen (14) days of
15 service of the written objections, respond to the challenge and state whether it agrees
16 or refuses to withdraw the challenged designation and the basis for any refusal. If the
17 Producing Party refuses to withdraw the challenged designation, then, within fourteen
18 (14) business days of service of the Producing Party's response, the Party challenging
19 the designation shall waive any such challenge unless it applies for judicial
20 intervention, pursuant to § 6.3, for an order or ruling that the challenged WA
21 Discovery Material should not be deemed "WA Confidential" or "WA Highly
22 Confidential."

23 6.4 **Judicial Intervention:** If Western Asset does respond within the
24 fourteen (14) day period and refuses to withdraw the challenged designation, then, the
25 challenging party, as "moving party" and Western Asset, as "opposing party" shall
26 thereafter follow the procedures set forth in this Court's Local Rules 37-2 through 37-
27 4. If challenging party does not serve its portion of the joint stipulation between one
28 and fourteen days after Western Asset refuses to withdraw the challenged designation,

1 the challenging party shall waive any such challenge. Under no circumstances may
2 Western Asset's time to serve its portion of the joint stipulation be shortened to less
3 than seven (7) days after receipt of the challenging party's portion. On any such
4 motion, Western Asset shall have the burden of proof with regard to the confidentiality
5 of material designated WA Protected Material. Any WA Confidential Material or WA
6 Highly Confidential Material as to which such a motion is made shall continue to be
7 treated as such until the final disposition of any request for review of the Court's
8 ruling, including without limitation any appeal, petition or writ to any court of
9 competent jurisdiction, or the expiration of the time to seek such review.

10 In the event that there has been a final ruling (i.e., final disposition of any
11 request for review, including without limitation any appeal, petition or writ) and that
12 ruling is that the challenged material's designation should be changed, the Designating
13 Party shall reproduce copies of all materials with their designations removed or
14 changed in accordance with the ruling within thirty (30) days of the ruling.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 A Receiving Party may use WA Discovery Material that is
17 disclosed or produced by Producing Party only in connection with this Action for
18 prosecuting, defending, or attempting to settle this Action; appealing from any order or
19 judgment entered in this Action; or obtaining insurance coverage or indemnification
20 relating to this Action. WA Discovery Material may not be used for any other
21 purpose, including, without limitation, for competitive advantage or for any other
22 business or commercial purpose, for dissemination to the media or the public, or in
23 connection with any other judicial, administrative, or arbitral proceeding. WA Protected
24 Material may be disclosed only to the categories of persons and under the conditions
25 described in this Order. When the litigation has been terminated, a Receiving Party must
26 comply with the provisions of §10, below (FINAL DISPOSITION).

27 WA Protected Material must be stored and maintained by a Receiving
28 Party at a secure location and in a secure manner that ensures that access is limited to

1 the persons authorized under this Order. For purposes of this Order, a secure website, or
2 other internet-based document depository with adequate security, shall be deemed a
3 secure location.

4 7.2 **Disclosure of Confidential Material** : Unless otherwise ordered by
5 the Court or permitted in writing by Producing Party, WA Discovery Material
6 designated “WA CONFIDENTIAL” may be disclosed only to:

7 (a) Counsel;

8 (b) where disclosure is reasonably necessary for this litigation, to current
9 officers, directors, and employees of corporate Parties and to Parties who are natural
10 persons;

11 (c) former officers, directors, and employees of corporate Parties to
12 whom disclosure is reasonably necessary for this litigation and who have signed the
13 “Agreement to Be Bound by Protective Order” (Exhibit A);

14 (d) Experts and/or Consultants retained by a Party or its Counsel to
15 serve as an expert witness or as a consultant in the Action and who have signed the
16 “Agreement to Be Bound by Protective Order” (Exhibit A), provided that any part of a
17 report created by such expert or consultant relying on or incorporating WA Protected
18 Material in whole or in part shall be designated appropriately by the Party responsible
19 for its creation; and provided further that experts or consultants may not use WA
20 Protected Material to their competitive advantage or for any purpose that does not
21 relate to the Action;

22 (e) This Court and the court in the Action (D.N.M.) and its personnel;

23 (f) Special masters and/or third parties appointed by this Court and the
24 court in the Action or retained by the Parties for settlement purposes or resolution of
25 discovery or other disputes, and their necessary staff;

26 (g) court reporters and/or videographers, their staffs, and Professional
27 Vendors to whom disclosure is reasonably necessary for this litigation;

28

1 (h) the author, addressees, or recipients of the document, or any other
2 natural person who reviewed such document during his or her employment as a result
3 of the substantive nature of his or her employment position (whether so identified by
4 the WA Protected Material itself or any other WA Discovery Material, including by
5 testimony), or who is specifically identified in the document;

6 (i) deponents or witnesses in the Action, and their Counsel, to whom
7 disclosure is reasonably necessary for this litigation, provided they have signed the
8 “Agreement to Be Bound by Protective Order” (Exhibit A) or have verbally agreed on
9 the record to maintain the confidential nature of such material; and

10 (j) any other person to whom Western Asset agrees in writing or on
11 the record; and

12 (k) any other person to whom this Court or the court in the Action
13 compels access to the WA Confidential Material.

14 **7.3 Disclosure of Highly Confidential Material :** Unless otherwise
15 ordered by the Court or permitted in writing by Producing Party, WA Discovery
16 Material designated “WA HIGHLY CONFIDENTIAL” may be disclosed only to:

17 (a) Counsel for the Parties to this Action;

18 (b) Experts and/or Consultants retained by a Party or its Counsel to
19 serve as an expert witness or as a consultant in the Action and who have signed the
20 “Agreement to Be Bound by Protective Order” (Exhibit A), provided that any part of a
21 report created by such expert or consultant relying on or incorporating WA Protected
22 Material in whole or in part shall be designated appropriately by the Party responsible
23 for its creation; and provided further that experts or consultants may not use WA
24 Protected Material to their competitive advantage or for any purpose that does not
25 relate to the Action;

26 (c) this Court and the court in the Action (D.N.M.) and its personnel;

27
28

1 (d) Special masters and/or third parties appointed by this Court or the
2 court in the Action or retained by the Parties for settlement purposes or resolution of
3 discovery or other disputes, and their necessary staff;

4 (e) court reporters and/or videographers, their staffs, and Professional
5 Vendors to whom disclosure is reasonably necessary for this litigation;

6 (f) the author, addressees or recipients of the document, or any other
7 natural person who reviewed such document during his or her employment as a result
8 of the substantive nature of his or her employment position (whether so identified by
9 the WA Protected Material itself or any other WA Discovery Material, including by
10 testimony), or who is specifically identified in the document;

11 (g) deponents or witnesses in the Action, and their Counsel, who meet
12 the requirements of § 7.2(i) above; and

13 (h) any other person to whom Western Asset agrees in writing or on
14 the record; and

15 (i) any other person to whom the Court compels access to the WA
16 Highly Confidential Material.

17 7.4 **Retention of Exhibit A:** Outside Counsel for the Party that obtains
18 the signed “Agreement to Be Bound by Protective Order” (Exhibit A), as required
19 above, shall retain them for one year following the final termination of this Action,
20 including any appeals, and shall make them available to other Parties upon good cause
21 shown.

22 7.5 **Retention of Protected Material:** Persons who have been shown
23 WA Protected Material pursuant to §7.2(c), (h) or (i), or §7.3(f) or (g) shall not retain
24 copies of such WA Protected Material.

25 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it or any
27 individual or entity to whom the Receiving Party disclosed WA Protected Material,
28 including its attorneys, experts, consultants, vendors, has disclosed WA Protected

1 Material to any person or in any circumstance not authorized under this Order, the
2 Receiving Party must immediately (a) notify Western Asset in writing of the
3 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the WA
4 Protected Material, (c) inform the person or persons to whom unauthorized
5 disclosures were made of all the terms of this Order, and (d) request such person or
6 persons to execute the “Agreement to Be Bound by Protective Order” (Exhibit A). The
7 Parties agree that irreparable harm would occur in the event of unauthorized disclosure
8 of WA Protected Material. Accordingly, Western Asset shall be entitled to seek
9 equitable relief, including specific performance, in the event of any unauthorized
10 disclosure of WA Protected Material.

11 **9. FILING PROTECTED MATERIAL**

12 **D.N.M.** In the event that before trial in this Action, or in connection
13 with any hearing in this Action or any matter relating to this Action, counsel for any
14 Party determines to file or submit in writing to the clerk of court’s office of the United
15 States District Court for the District of New Mexico any WA Protected Material,
16 including WA Highly Confidential Material, or any papers containing or making
17 reference to the substance of such material or information, such documents or
18 portions thereof containing or making reference to such material or information shall
19 be filed under seal in accordance section 9 of the Confidentiality Protective Order filed
20 March 1, 2012, in the Action.

21 **C.D.Cal.** In the event that in connection with any hearing before this
22 Court relating to this Order or any matter relating to the Action, Counsel determines to
23 file or submit in writing to the Clerk of the Court’s office any WA Protected Material,
24 including WA Highly Confidential Material, or any papers containing or making
25 reference to the substance of such material or information, such documents or portions
26 thereof containing or making reference to such material or information **shall be**
27 **submitted with a request for filing** under seal in accordance with Local Rule 79.

1 **10. FINAL DISPOSITION**

2 Unless otherwise ordered or agreed in writing by Producing Party,
3 within sixty (60) days after the final termination of this Action, including any appeals,
4 each Receiving Party must return all WA Protected Material to Producing
5 Party. As used in this section, “WA Protected Material” includes all copies,
6 abstracts, compilations, summaries, or any other form of reproducing or capturing
7 any of the WA Protected Material. The Receiving Party may destroy some or all of
8 the WA Protected Material instead of returning it. Whether the WA Protected Material
9 is returned or destroyed, the Receiving Party must submit a written certification to
10 Producing Party by the sixty (60) day deadline that identifies (by category, where
11 appropriate) all the WA Protected Material that was returned or destroyed and that
12 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
13 summaries, or other forms of reproducing or capturing any of the WA Protected
14 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
15 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or
16 attorney work product, even if such materials contain WA Protected Material. Any
17 such archival copies that contain or constitute WA Protected Material remain subject
18 to this Order as set forth in §4 (DURATION), above.

19 **11. A DESIGNATING OR PRODUCING PARTY’S USE OF ITS
20 OWN DOCUMENTS**

21 Nothing in this Order shall be construed to limit in any way Western
22 Asset’s use of its own documents, nor shall it affect any Party’s or any other person’s
23 subsequent waiver of its own prior designation with respect to its own Confidential
24 Material or Highly Confidential Material.

25 **12. INADVERTENTLY PRODUCED DOCUMENTS**

26 Pursuant to Fed. R. Evid. 502, if Producing Party at any time notifies any
27 other Party that it inadvertently disclosed documents, testimony, information, and/or
28 things that are protected from disclosure under the attorney-client privilege, work

1 product doctrine, and/or any other applicable privilege or immunity from disclosure, or
2 the Receiving Party discovers such inadvertent disclosure, the inadvertent disclosure
3 shall not be deemed a waiver of the applicable privilege or protection.

4 The Receiving Party shall immediately return or destroy all copies of such
5 documents, testimony, information, and/or things to Producing Party, shall provide a
6 certification of counsel that all inadvertently disclosed materials have been returned or
7 destroyed, and shall not use such items for any purpose until further order of the
8 Court. In all events, such return or destruction and certification must occur within five
9 (5) business days of receipt of notice or discovery of the inadvertent disclosure.
10 Within five (5) business days of the notification that the inadvertently disclosed
11 materials have been returned or destroyed, the Producing Party shall produce a
12 privilege log with respect to the inadvertently disclosed materials. The return of any
13 WA Discovery Material to Producing Party shall not in any way preclude the
14 Receiving Party from moving the Court for a ruling that the disclosed information was
15 never privileged; however, the Receiving Party cannot assert as a basis for the relief it
16 seeks the fact or circumstance that such privileged documents have already been
17 produced. Alleged privileged documents shall remain protected against disclosure and
18 use during the pendency of any dispute over their status. Nothing in this Order shall
19 affect Producing Party or any Party's right to withhold from disclosure documents or
20 information that are privileged or otherwise protected from disclosure.

21 **13. ATTORNEY RENDERING ADVICE**

22 Nothing in this Order will bar or otherwise restrict an attorney from
23 rendering advice to his or her client with respect to this matter or from relying upon
24 or generally referring to WA Protected Material in rendering such advice; provided
25 however, that in rendering such advice or in otherwise communicating with his or her
26 client, the attorney shall not reveal or disclose the specific content thereof if such
27 disclosure is not otherwise permitted under this Order.

28

1 **14. DISPOSITIVE MOTION HEARINGS AND TRIAL**

2 Any documents designated as "WA Confidential" or "WA Highly
3 Confidential" may be used in open court in any proceeding in the Action (including, if
4 otherwise permissible, as evidence at any hearing or the trial of the Action) or on
5 appeal, without violation of this Order, but WA Protected Material shall not lose its
6 status as WA Protected Material through such use. Nothing in this Stipulation and
7 Order, however, shall preclude Western Asset from seeking an appropriate protective
8 order from the appropriate court, should Western Asset seek to maintain the
9 confidentiality of material used in open court.

10 Western Asset and each Party expressly reserves its right to seek
11 modification of the restrictions that govern the use of WA Protected Material at trial.
12 The Parties agree to negotiate in good faith with Western Asset as trial approaches
13 regarding the use of WA Protected Material. Absent exigent circumstances, no later
14 than 30 days prior to trial in the Action, the Parties shall confer with Western Asset
15 about the use of WA Protected Material at trial. The Parties shall promptly provide
16 Western Asset with any filing or submission to the United States District Court for the
17 District of New Mexico discussing the use of WA Protected Material at trial. Any
18 objection by Western Asset to the use of WA Protected Material in open court at a
19 hearing or trial shall be resolved by the United States District Court presiding over the
20 hearing or trial at which such use is contemplated.

21 **15. LEGAL PROCESS**

22 If a Receiving Party is served with a discovery request, subpoena, or an
23 order issued in another proceeding (including any proceeding before any other
24 court, arbitration panel, regulatory agency, law enforcement or administrative
25 body), or receives some other form of legal process or discovery or regulatory
26 request from any court, federal or state regulatory or administrative body or agency,
27 legislative body, or self-regulatory organization, that would seek disclosure of any
28 material designated in this Action as "WA Confidential" or "WA Highly

1 Confidential,” the Receiving Party must notify Western Asset, in writing (by fax or
2 electronic mail, if possible), along with a copy of the discovery or regulatory request,
3 subpoena, or order, as soon as reasonably practicable and in any event no later than
4 five (5) business days from receipt, unless otherwise required or prohibited by law.

5 The Receiving Party also must immediately inform the party who caused
6 the discovery or regulatory request, subpoena, or order to issue in the other litigation,
7 investigation, or inquiry that some or all of the material covered by the subpoena,
8 request, or order is the subject of this Order. In addition, the Receiving Party must
9 deliver a copy of this Order promptly to the party in the other action that caused the
10 discovery request, regulatory request, subpoena, or order to issue. The Receiving
11 Party shall not produce the requested WA Protected Material unless and until the Court
12 so directs, except if Western Asset (a) consents, or (b) fails to file a motion to quash or
13 otherwise contest the production of the WA Protected Material prior to the date
14 designated for production of the WA Protected Material, in which event the
15 Receiving Party may produce on the production date, but no earlier.

16 The purpose of imposing these duties is to alert the interested parties to
17 the existence of this Order and to afford Western Asset an opportunity to try to protect
18 its confidentiality interest in the proceeding from which the discovery request,
19 regulatory request, subpoena, or order is issued. Western Asset shall bear the burdens
20 and the expenses of seeking protection in that court or proceeding of its WA Protected
21 Material. Nothing in these provisions should be construed as authorizing or
22 encouraging a Receiving Party in this Action to disobey a lawful directive or request
23 from another court, arbitration panel, regulatory agency, law enforcement,
24 legislative, or administrative body.

25 **16. AMENDMENT OF ORDER**

26 Nothing herein shall preclude any Party or Western Asset from seeking to
27 amend this Order for good cause shown.

28

1 **17. MISCELLANEOUS**

2 **17.1 Right to Assert Other Objections:** By stipulating to the entry
3 of this Order Western Asset does not waive any right it otherwise would have to
4 object to disclosing or producing any information or item on any ground not resolved
5 in this Order. Similarly, no Party waives any right to object on any ground to use in
6 evidence any of the material covered by this Order. Agreeing to the entry of this
7 Order, and/or producing or receiving WA Confidential or WA Highly Confidential
8 discovery material or otherwise complying with the terms of this Order shall not
9 prejudice in any way the rights of any Party or Western Asset to object to the
10 production of documents or information it considers not subject to discovery or to
11 object to the authenticity or admissibility into evidence of any document, testimony, or
12 other evidence subject to this Order.

13 **17.2 Governing Law:** Except as provided for in Section 14, this Order
14 shall be enforced in the Central District of California. This Order shall be governed
15 by, interpreted under, and construed and enforced in accordance with the laws of the
16 State of California, without regard to conflict of law principles. Any dispute between
17 the parties regarding this Order shall be resolved by making an appropriate
18 application to this Court in accordance with the Rules of the Court and other
19 applicable Rules.

20 **IT IS SO ORDERED.**

21
22 DATED: May 11, 2012

Carla M. Woehrle

HON. CARLA M. WOEHRLE
United States Magistrate Judge