

1 J. DAVID SACKMAN (SBN 106703)
 Email: jds@rac-law.com
 2 REICH, ADELL & CVITAN, APC
 3550 Wilshire Boulevard, Suite 2000
 3 Los Angeles, California 90010-2421
 Telephone: (213) 386-3860, Facsimile: (213) 386-5583
 4 Attorneys for Plaintiff Construction Laborers Trust
 Funds for Southern California Administrative Co.
 5

6 DAVID S. MCLEOD (SBN 66808)
 Email: dmcleod@.mmwf.com
 MCLEOD & WITHAM LLP
 8 300 S. Grand Avenue, Suite 2525
 Los Angeles, CA 90071
 Telephone: (213) 627-3600; Facsimile: (213) 627-6290
 9 Attorneys for Defendants Morrow-Meadows
 Corporation and American Contractors Indemnity Co.
 10
 11

12 J. PAUL MOORHEAD (SBN 240029)
 Email: moorhead@luch.com
 13 LAQUER, URBAN, CLIFFORD & HODGE LLP
 225 South Lake Avenue, Suite 200
 14 Pasadena, California 91101-3030
 Telephone: (626) 449-1882; Facsimile: (626) 449-1958
 15 Attorneys for Intervenor - Defendants,
 Trustees of the Southern California IBEW-NECA Pension Plan, et al.
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19 **UNITED STATES DISTRICT COURT**
 20 **CENTRAL DISTRICT OF CALIFORNIA**
 21

22 CONSTRUCTION LABORERS TRUST
 FUNDS FOR SOUTHERN CALIFORNIA
 23 ADMINISTRATIVE COMPANY,

24 Plaintiff,

25 v.

26 MORROW-MEADOWS
 CORPORATION, et al.,
 27

28 Defendants,

Case No. 2:16-cv-07454-MWF(ASx)

Discovery Matters Assigned to
 Magistrate Judge Alka Sagar

**STIPULATED
 PROTECTIVE ORDER**

1 TRUSTEES OF THE SOUTHERN
2 CALIFORNIA IBEW-NECA PENSION
3 PLAN; et al.

4 Intervenor – Defendants,
5

6 Plaintiff Construction Laborers Trust Funds for Southern California
7 Administrative Company (“Laborers Trusts”), Defendants Morrow-Meadows
8 Corporation (“Morrow-Meadows”) and American Contractors Indemnity Co., and
9 Intervenor-Defendants Trustees of the Southern California IBEW-NECA Pension Plan,
10 et al. (“IBEW-NECA Trusts”), through their attorneys, hereby stipulate as follows:

11 1. A. PURPOSES AND LIMITATIONS

12 Discovery in this action is likely to involve production of confidential,
13 proprietary, or private information for which special protection from public disclosure
14 and from use for any purpose other than prosecuting this litigation may be warranted.
15 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
16 Stipulated Protective Order. The parties acknowledge that this Order does not confer
17 blanket protections on all disclosures or responses to discovery and that the protection it
18 affords from public disclosure and use extends only to the limited information or items
19 that are entitled to confidential treatment under the applicable legal principles. The
20 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
21 Protective Order does not entitle them to file confidential information under seal; Civil
22 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
23 will be applied when a party seeks permission from the court to file material under seal.

24 B. GOOD CAUSE STATEMENT

25 This action is likely to involve private and confidential identification information
26 (social security numbers) of Morrow-Meadow employees. Through the ongoing audit
27 in this matter, the Laborers Trusts have already reviewed such information.
28 Additionally, the Laborers Trusts have served the IBEW-NECA Trusts with a document

1 demand for certain unredacted reports, submitted by Morrow-Meadows to the IBEW-
2 NECA Trusts, which contain employee social security numbers. This action may also
3 involve information which Morrow-Meadows may claim is confidential. The
4 information related to Morrow-Meadows and its employees is generally unavailable to
5 the public, and is entitled to special protection from public disclosure and from use for
6 any purpose other than prosecution of this action is warranted.

7 Accordingly, to expedite the flow of information, to facilitate the prompt
8 resolution of disputes over confidentiality of discovery materials, to adequately protect
9 information the parties are entitled to keep confidential, to ensure that the parties are
10 permitted reasonable necessary uses of such material in preparation for and in the
11 conduct of trial, to address their handling at the end of the litigation, and serve the ends
12 of justice, a protective order for such information is justified in this matter. It is the
13 intent of the parties that information will not be designated as confidential for tactical
14 reasons and that nothing be so designated without a good faith belief that it has been
15 maintained in a confidential, non-public manner, and there is good cause why it should
16 not be part of the public record of this case.

17 2. DEFINITIONS

18 2.1 Action: This pending federal law suit.

19 2.2 Challenging Party: A Party or Non-Party that challenges the designation of
20 information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of how
22 it is generated, stored or maintained) or tangible things that qualify for protection under
23 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
24 Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
26 support staff).

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1 2.5 Designating Party: A Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: All items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including, among
6 other things, testimony, transcripts, and tangible things), that are produced or generated
7 in disclosures or responses to discovery in this matter.

8 2.7 Expert: A person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
10 expert witness or as a consultant in this Action.

11 2.8 House Counsel: Attorneys who are employees of a party to this Action.
12 House Counsel Does not include Outside Counsel of Record or any other outside
13 Counsel.

14 2.9 Non-Party: Any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: Attorneys who are not employees of a party to
17 this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm which
19 has appeared on behalf of that party, and includes support staff.

20 2.11 Party: Any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: Persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
28 their employees and subcontractors.

1 2.14 Protected Material: Any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only Protected
7 Material (as defined above), but also (1) any information copied or extracted from
8 Protected Material;(2) all copies, excerpts, summaries, or compilations of Protected
9 Material; and (3) any testimony, conversations, or presentations by Parties or their
10 Counsel that might reveal Protected Material. Any use of Protected Material at trial
11 shall be governed by the orders of the trial judge. This Order does not govern the use of
12 Protected Material at trial.

13 4. DURATION

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

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

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Order, or as otherwise stipulated or ordered, Disclosure Discovery Material that
12 qualifies for protection under this Order must be clearly so designated before the
13 material is disclosed or produced. Designation in conformity with this Order requires:

14 (a) for information in documentary form (other than electronic
15 documents, dealt with below, and excluding transcripts of depositions or other pretrial
16 or trial proceedings), that the Producing Party affix at a minimum, the legend
17 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
18 contains protected material. If only a portion or portions of the material on a page
19 qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-Party
21 that makes original documents available for inspection need not designate them for
22 protection until after the inspecting Party has indicated which documents it would like
23 copied and produced. During the inspection and before the designation, all of the
24 material made available for inspection shall be deemed "CONFIDENTIAL." After the
25 inspecting Party has identified the documents it wants copied and produced, the
26 Producing Party must determine which documents, or portions thereof, qualify for
27 protection under this Order. Then, before producing the specified documents, the
28 Producing Party must affix the "CONFIDENTIAL legend" to each page that contains

1 Protected Material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
3 by making appropriate markings in the margins).

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

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

13 (d) for information in electronic format, the Producing Party shall, in a
14 separate communication, indicate which portions of the electronic data should be
15 considered “CONFIDENTIAL” (e.g., indicating a column of social security numbers in
16 spreadsheet is “CONFIDENTIAL”). The Producing Party and the Receiving Party
17 shall jointly be responsible for taking reasonable precautions to assure that
18 CONFIDENTIAL information will be protected in the transmission or exchange of
19 electronic data. All Parties shall be responsible for complying with all laws and
20 regulations protecting the privacy of electronic data, including, but not limited to, the
21 Electronic Communications Privacy Act (18 U.S.C. §2510, et. seq.) and the Computer
22 Fraud and Abuse Act (18 U.S.C. §1030, et. seq.)

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material. Upon
26 timely correction of a designation, the Receiving Party must make reasonable efforts to
27 assure that the material is treated in accordance with the provisions of this Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s Scheduling
4 Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
9 to harass or impose unnecessary expenses and burdens on other parties) may expose the
10 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
11 the confidentiality designation, all parties shall continue to afford the material in
12 question the level of protection to which it is entitled under the Producing Party’s
13 designation until the Court rules of the challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

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

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

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

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

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1 8. PROTECTED MATERIAL SUBPOENED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

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

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

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

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected. If the Designating
14 Party timely seeks a protective order, the Party served with the subpoena or court order
15 shall not produce any information designated in this action as “CONFIDENTIAL”
16 before a determination by the court from which the subpoena or order issued, unless the
17 Party has obtained the Designating Party’s permission. The Designating Party shall
18 bear the burden and expense of seeking protection in that court of its confidential
19 material and nothing in these provisions should be construed as authorizing or
20 encouraging a Receiving Party in this Action to disobey a lawful directive from another
21 court.

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

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

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

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

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

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

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

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to an person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
25 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
26 all unauthorized copies of the Protected Material, (c) inform the person or persons to
27 whom unauthorized disclosures were made of all the terms of this Order, and (d)
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1 request such person or persons to execute the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A).

3 11. INADVERTENT PRODUCTION OF PRIVILEGE OR OTHERWISE
4 PROTECTED MATERIAL

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

15 12. MISCELLANEOUS

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

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

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

1 12.4 Nothing herein is meant to alter or supersede the obligations of counsel to
2 comply with the E-Government Act of 2002, Public Law 107–347, Fed. R. Civ. P. 5.2,
3 and Local Rule 5-2, in filing documents with the Court.

4 12.5 It is recognized that the Laborers Trusts and the IBEW-NECA Trusts are
5 fiduciaries as to employee benefit plans governed by the Employee Retirement Income
6 Security Act (ERISA), 29 U.S.C. §§ 1001, et. seq. As such, they (and other agents and
7 employees of such employee benefit plans) have independent legal obligations under
8 ERISA and other laws regarding reporting, disclosure, use and protection of certain
9 information. Nothing herein is meant to alter or supersede those legal obligations in
10 any way.

11 13. FINAL DISPOSITION

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

1 14. Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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6 Dated: December 4, 2017 REICH, ADELL & CVITAN, APC
7 By: /S/ J. David Sackman
8 J. David Sackman, Counsel for Plaintiff,
9 Construction Laborers Trust Funds for Southern
California Administrative Company

10 Dated: December 4, 2017 MCLEOD & WITHAM LLP
11 By: /S/ David S. McLeod
12 David S. McLeod, Counsel for Defendants,
13 Defendants Morrow-Meadows Corporation and
American Contractors Indemnity Co.

14 Dated: December 4, 2017 LAQUER, URBAN, CLIFFORD & HODGE LLP
15 By: /S/ J. Paul Moorhead
16 J. Paul Moorhead, Counsel for Intervenors –
17 Defendants, Trustees of the Southern California
IBEW-NECA Pension Plan, et. al.
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19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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21 Dated: December 6, 2017 / s / Alka Sagar
22 Honorable Alka Sagar
23 United States Magistrate Judge
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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 I have read in its
6 entirety and understand the Stipulated Protective Order that was issued by the United
7 States District Court for the Central District of California on [date] in the case of
8 Construction Laborers Trust Funds for Southern California Administrative Company v.
9 Morrow-Meadows Corporation, et al., USDC Case No. 2:16-cv-07454-MWF(ASx). I
10 agree to comply with and to be bound by all the terms of this Stipulated Protective
11 Order and I understand and acknowledge that failure to so comply could expose me to
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
13 disclose in any manner any information or item that is subject to this Stipulated
14 Protective Order to any person or entity except in strict compliance with the provisions
15 of this Order. I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceeding occur after
18 termination of this action. I hereby appoint _____ [print or type full name]
19 of _____ [print or type full address and telephone number]
20 as my California agent for service of proceedings connection with this action or any
21 proceedings related to enforcement of this Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

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