

1 Order does not confer blanket protections on all disclosures or responses to 2 discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment 3 4 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 5 6 file confidential information under seal; Civil Local Rule 79-5 sets forth the 7 procedures that must be followed and the standards that will be applied when a 8 party seeks permission from the court to file material under seal.

9

B. GOOD CAUSE STATEMENT

This action is likely to involve confidential and proprietary information of 10 defendant ABM ONSITE SERVICES - WEST, INC. ("ABM") including 11 12 confidential financial and business information of ABM, and information pertaining to various of ABM's employees and customers, for which special protection from 13 public disclosure and from use for any purpose other than prosecution of this action 14 15 is warranted. Such confidential and proprietary materials and information consist 16 of, among other things, confidential business or financial information, information regarding confidential business practices, commercial information (including 17 information implicating privacy rights of third parties), information otherwise 18 19 generally unavailable to the public, or which may be privileged or otherwise 20 protected from disclosure under state or federal statutes, court rules, case decisions, 21 or common law. Accordingly, to expedite the flow of information, to facilitate the 22 prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to 23 24 ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the 25 26 litigation, and serve the ends of justice, a protective order for such information is 27 justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated 28

BUCHALTER A Professional Corporati LOS ANGELES

without a good faith belief that it has been maintained in a confidential, non-public
 manner, and there is good cause why it should not be part of the public record of
 this case.

4

5

2. <u>DEFINITIONS</u>

2.1 <u>Action</u>: This pending federal lawsuit.

6 2.2 <u>Challenging Party</u>: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.3 <u>"CONFIDENTIAL" Information or Items</u>: information
9 (regardless of how it is generated, stored or maintained) or tangible things that
10 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
11 above in the Good Cause Statement.

12 2.4 <u>Counsel</u>: Outside Counsel of Record and House Counsel (as
13 well as their support staff).

14 2.5 <u>Designating Party</u>: a Party or Non-Party that designates
15 information or items that it produces in disclosures or in responses to discovery as
16 "CONFIDENTIAL."

2.6 <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, or
which are provided or produced voluntarily by any Designating Party.

22 2.7 <u>Expert</u>: a person with specialized knowledge or experience in a
23 matter pertinent to the litigation who has been retained by a Party or its counsel to
24 serve as an expert witness or as a consultant in this Action.

25 2.8 <u>House Counsel</u>: attorneys who are employees of a party to this
26 Action. House Counsel does not include Outside Counsel of Record or any other
27 outside counsel.

28

2.9 1 Non-Party: any natural person, partnership, corporation, 2 association, or other legal entity not named as a Party to this action. 3 2.10 Outside Counsel of Record: attorneys who are not employees of 4 a party to this Action but are retained to represent or advise a party to this Action 5 and have appeared in this Action on behalf of that party or are affiliated with a law 6 firm that has appeared on behalf of that party, including support staff. 7 2.11 Party: any party to this Action, including all of its officers, 8 directors, employees, consultants, retained experts, and Outside Counsel of Record 9 (and their support staffs). 10 2.12 Producing Party: a Party or Non-Party that produces Disclosure 11 or Discovery Material in this Action. 12 2.13 Professional Vendors: persons or entities that provide litigation 13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) 14 15 and their employees and subcontractors. 16 2.14 Protected Material: any Disclosure or Discovery Material that is 17 designated as "CONFIDENTIAL." 2.15 Receiving Party: a Party that receives Disclosure or Discovery 18 Material from a Producing Party. 19 3. 20 SCOPE 21 The protections conferred by this Stipulation and Order cover not only 22 Protected Material (as defined above), but also: (a) any information copied or extracted from Protected Material; (b) all copies, excerpts, summaries, or 23 24 compilations of Protected Material; and (c) any testimony, conversations, or 25 presentations by Parties or their Counsel that might reveal Protected Material. 26 Any use of Protected Material at trial shall be governed by the orders of the 27 trial judge. This Order does not govern the use of Protected Material at trial. 28

BUCHALTER A Professional Corporation LOS ANGELES

4. <u>DURATION</u>

Once a case proceeds to trial, all of the court-filed information to be 2 introduced that was previously designated as confidential or maintained pursuant to 3 4 this protective order becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by 5 6 specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See, Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1180-7 81 (9th Cir. 2006) (distinguishing "good cause" showing for sealing documents 8 9 produced in discovery from "compelling reasons" standard when merits-related 10 documents are part of court record). Accordingly, the terms of this protective order 11 do not extend beyond the commencement of the trial.

12

1

5. <u>DESIGNATING PROTECTED MATERIAL</u>

5.1 13 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for 14 15 protection under this Order must take care to limit any such designation to specific 16 material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or 17 written communications that qualify so that other portions of the material, 18 19 documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. 20

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

28

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.

Designation in conformity with this Order requires:

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

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

28

8

1 (b) for testimony given in depositions that the Designating 2 Party identify the Disclosure or Discovery Material on the record, before the close of the deposition. 3 4 (c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a 5 6 prominent place on the exterior of the container or containers in which the information is stored the legend "CONFIDENTIAL." If only a portion or portions 7 8 of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s). 9 Inadvertent Failures to Designate. If timely corrected, an 10 5.3 11 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 12 13 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 14 provisions of this Order. 15 16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS 17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's 18 19 Scheduling Order. 6.2 20 Meet and Confer. The Challenging Party shall initiate the 21 dispute resolution process under Local Rule 37.1, et seq. Any discovery motion 22 must strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 23 37-3. 6.3 24 Burden. The burden of persuasion in any such challenge 25 proceeding shall be on the Designating Party. Frivolous challenges, and those 26 made for an improper purpose (e.g., to harass or impose unnecessary expenses and 27 burdens on other parties) may expose the Challenging Party to sanctions. Unless 28 the Designating Party has waived or withdrawn the confidentiality designation, all

BUCHALTER A Professional Corporati LOS ANGELES

1 parties shall continue to afford the material in question the level of protection to 2 which it is entitled under the Producing Party's designation until the Court rules on the challenge. 3

4

7.

ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material 5 6 that is disclosed or produced by another Party or by a Non-Party in connection with 7 this Action only for prosecuting, defending, or attempting to settle this Action. 8 Such Protected Material may be disclosed only to the categories of persons and 9 under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL) 10 DISPOSITION). 11

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

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a 16 Receiving Party may disclose any information or item designated 17 "CONFIDENTIAL" only to: 18

19 (a) the Receiving Party's Outside Counsel of Record in this 20 Action, as well as employees of said Outside Counsel of Record to whom it is 21 reasonably necessary to disclose the information for this Action;

22 (b) the officers, directors, and employees (including House 23 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this 24 Action:

(c) Experts (as defined in this Order) of the Receiving Party to 25 26 whom disclosure is reasonably necessary for this Action and who have signed the 27

- "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 28

(d) the Court and its personnel;

CASE NO CV 16-

1	(e) court reporters and their staff;
2	(f) professional jury or trial consultants, mock jurors, and
3	Professional Vendors to whom disclosure is reasonably necessary for this Action
4	and who have signed the "Acknowledgment and Agreement to Be Bound"
5	(<u>Exhibit 1</u>);
6	(g) the author or recipient of a document containing the
7	information or a custodian or other person who otherwise possessed or knew the
8	information;
9	(h) during their depositions, witnesses, and attorneys for
10	witnesses, in the Action to whom disclosure is reasonably necessary provided:
11	(i) the deposing party requests that the witness sign the form attached as Exhibit 1
12	hereto; and (ii) they will not be permitted to keep any confidential information
13	unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit 1),
14	unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
15	transcribed deposition testimony or exhibits to depositions that reveal Protected
16	Material may be separately bound by the court reporter and may not be disclosed to
17	anyone except as permitted under this Stipulated Protective Order; and
18	(i) any mediator or settlement officer, and their supporting
19	personnel, mutually agreed upon by any of the parties engaged in settlement
20	discussions.
21	8. <u>PROTECTED MATERIAL SUBPOENAED OR ORDERED</u>
22	PRODUCED IN OTHER LITIGATION
23	If a Party is served with a subpoena or a court order issued in other litigation
24	that compels disclosure of any information or items designated in this Action as
25	"CONFIDENTIAL," that Party must:
26	(a) promptly notify in writing the Designating Party. Such
27	notification shall include a copy of the subpoena or court order;
28	

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

5

6

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

7 If the Designating Party timely seeks a protective order, the Party served with 8 the subpoena or court order shall not produce any information designated in this 9 action as "CONFIDENTIAL" before a determination by the court from which the 10subpoena or order issued, unless the Party has obtained the Designating Party's 11 permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions 12 13 should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court. 14

15

16

9. <u>A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE</u> PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such 18 19 information produced by Non-Parties in connection with this litigation is protected 20 by the remedies and relief provided by this Order. Nothing in these provisions 21 should be construed as prohibiting a Non-Party from seeking additional protections. 22 (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 23 24 subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall: 25

(i) promptly notify in writing the Requesting Party and the
Non-Party that some or all of the information requested is subject to a

- 28 confidentiality agreement with a Non-Party;
- BUCHALTER A Professional Corporat LOS ANGELES

(ii) 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

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

6 (c) If the Non-Party fails to seek a protective order from this Court 7 within fourteen (14) days of receiving the notice and accompanying information, 8 the Receiving Party may produce the Non-Party's confidential information 9 responsive to the discovery request. If the Non-Party timely seeks a protective 10 order, the Receiving Party shall not produce any information in its possession or 11 control that is subject to the confidentiality agreement with the Non-Party before a 12 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 13 Protected Material. 14

15

10. <u>UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL</u>

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this 17 18 Stipulated Protective Order, the Receiving Party must immediately: (a) notify in 19 writing the Designating Party of the unauthorized disclosures; (b) use its best 20 efforts to retrieve all unauthorized copies of the Protected Material; (c) inform the 21 person or persons to whom unauthorized disclosures were made of all the terms of 22 this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit 1. 23

24 25 (

11. <u>INADVERTENT PRODUCTION OF PRIVILEGED OR</u>

25 <u>OTHERWISE PROTECTED MATERIAL</u> 26 (a) When a Producing Party gives notice to Receiving Parties that

27 certain inadvertently produced material is subject to a claim of privilege or other

28

protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

3

1

2

(b) <u>Clawback Agreement Pursuant to Fed.R.Evid. 502(d)</u>.

(i) No Waiver by Disclosure. This order is entered pursuant to 4 Rule 502(d) of the Federal Rules of Evidence. Subject to the provisions of this 5 6 Order, if a party (the "Disclosing Party") discloses information in connection with the pending litigation that the Disclosing Party thereafter claims to be privileged or 7 8 protected by the attorney-client privilege or work product protection ("Protected 9 Information"), the disclosure of that Protected Information will not constitute or be deemed a waiver or forfeiture—in this or any other action—of any claim of 10 11 privilege or work product protection that the Disclosing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter. 12

13 (ii) Notification Requirements; Best Efforts of Receiving Party. A Disclosing Party must promptly notify the party receiving the Protected 14 Information ("the Receiving Party"), in writing, that it has disclosed that Protected 15 16 Information without intending a waiver by the disclosure. Upon such notification, the Receiving Party must—unless it contests the claim of attorney-client privilege 17 18 or work product protection in accordance with paragraph (iii)—promptly (A) notify 19 the Disclosing Party that it will make best efforts to identify and return, sequester or 20 destroy (or in the case of electronically stored information, delete) the Protected 21 Information and any reasonably accessible copies it has and (B) provide a 22 certification that it will cease further review, dissemination, and use of the 23 Protected Information. Within five business days of receipt of the notification from 24 the Receiving Party, the Disclosing Party must explain as specifically as possible why the Protected Information is privileged. [For purposes of this Order, Protected 25 26 Information that has been stored on a source of electronically stored information 27 that is not reasonably accessible, such as backup storage media, is sequestered. If

28

such data is retrieved, the Receiving Party must promptly take steps to delete or
 sequester the restored protected information.]

3	(iii) <u>Contesting Claim of Privilege or Work Product Protection</u> .
4	If the Receiving Party contests the claim of attorney-client privilege or work
5	product protection, the Receiving Party must—within five business days of receipt
6	of the notice of disclosure—move the Court for an Order compelling disclosure of
7	the information claimed as unprotected (a "Disclosure Motion"). The Disclosure
8	Motion must be filed under seal and must not assert as a ground for compelling
9	disclosure the fact or circumstances of the disclosure. Pending resolution of the
10	Disclosure Motion, the Receiving Party must not use the challenged information in
11	any way or disclose it to any person other than those required by law to be served
12	with a copy of the sealed Disclosure Motion.
13	(iv) Stipulated Time Periods. The parties may stipulate to
14	extend the time periods set forth in paragraphs (ii) and (iii).
15	(v) <u>Attorney's Ethical Responsibilities</u> . Nothing in this order
16	overrides any attorney's ethical responsibilities to refrain from examining or
17	disclosing materials that the attorney knows or reasonably should know to be
18	privileged and to inform the Disclosing Party that such materials have been
19	produced.
20	(vi) Burden of Proving Privilege or Work-Product Protection.
21	The Disclosing Party retains the burden—upon challenge pursuant to paragraph
22	(iii)—of establishing the privileged or protected nature of the Protected
23	Information.
24	(vii) In camera Review. Nothing in this Order limits the right
25	of any party to petition the Court for an in camera review of the Protected
26	Information.
27	(viii) Voluntary and Subject Matter Waiver. This Order does
28	not preclude a party from voluntarily waiving the attorney-client privilege or work
TION	

product protection. The provisions of Federal Rule 502(a) apply when the
 Disclosing Party uses or indicates that it may use information produced under this
 Order to support a claim or defense.

4 (ix) <u>Rule 502(b)(2)</u>. The provisions of Federal Rule of
5 Evidence 502(b)(2) are inapplicable to the production of Protected Information
6 under this Order.

7

12. <u>MISCELLANEOUS</u>

8 12.1 <u>Right to Further Relief</u>. Nothing in this Order abridges the right
9 of any person to seek its modification by the Court in the future.

10 12.2 <u>Right to Assert Other Objections</u>. By stipulating to the entry of
11 this Protective Order, no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.

16 12.3 <u>Filing Protected Material</u>. A Party that seeks to file under seal
any Protected Material must comply with Civil Local Rule 79-5. Protected
Material may only be filed under seal pursuant to a court order authorizing the
sealing of the specific Protected Material at issue; good cause must be shown in the
request to file under seal. 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
record unless otherwise instructed by the Court.

23

13. FINAL DISPOSITION

After the final disposition of this Action, within sixty (60) days of a written
request by the Designating Party, each Receiving Party must return all Protected
Material to the Producing Party or destroy such material. As used in this
subdivision, "all Protected Material" includes all copies, abstracts, compilations,
summaries, and any other format reproducing or capturing any of the Protected

BUCHALTER A Professional Corporation Los Angeles

1	Material. Whether the Protected Material is returned or destroyed, the Receiving
2	Party must submit a written certification to the Producing Party (and, if not the
3	same person or entity, to the Designating Party) by the sixty (60) day deadline that
4	(a) identifies (by category, where appropriate) all the Protected Material that was
5	returned or destroyed and (b) affirms that the Receiving Party has not retained any
6	copies, abstracts, compilations, summaries or any other format reproducing or
7	capturing any of the Protected Material. Notwithstanding this provision, counsel
8	are entitled to retain an archival copy of all pleadings, motion papers, trial,
9	deposition, and hearing transcripts, legal memoranda, correspondence, deposition
10	and trial exhibits, expert reports, attorney work product, and consultant and expert
11	work product, even if such materials contain Protected Material. Any such archival
12	copies that contain or constitute Protected Material remain subject to this Protective
13	Order as set forth in Section 4 (DURATION).
14	14. Any violation of this Order may be punished by any and all
15	appropriate measures including, without limitation, contempt proceedings and/or
16	monetary sanctions.
17	
18	DATED: October 18, 2017 (Paul L. alramst
19	Jane A. Orlanie
20	Hon. Paul L. Abrams
21	United States Magistrate Judge
22	Submitted by:
23	Submitted by:
24	BUCHALTER NEMER A Professional Corporation
25	
26	By /s/ Lawrence B. Steinberg
27	Attorneys for defendants ABM ONSITE SERVICES - WEST, INC., CAREY DOSS, HUBERT LAM, AMADO HERNANDEZ
28	and JAMES ALTIERI
RATION.	

1	EXHIBIT 1
2	ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
3	I [print or type full name] of
4	[print or type full name], of [print or type full address], declars under penalty of periury that I have read in its entirety and understand the
5	Stipulated Protective Order that was issued by the United States District Court for the Central District of California on October
6	I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on October, 2017 in the case of Christian v. ABM Onsite Services, et al., United States District Court for the Central District of California, Case No. CV 2:16-8493 MWF (PLAx).
7	
8 9	I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.
10	subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.
11	
12	I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint
13	[print or type full name], of[print or type
14	[print or type full name], of [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this
15	Stipulated Protective Order.
16	Date:
17	City and State where sworn and signed:
18	Printed name:
19	
20	Signature:
21	
22	
23	
24	
25	
26	
27	
28	