

1 MORGAN, LEWIS & BOCKIUS LLP
 Lisa Veasman, Bar No. 259050
 2 lisa.veasman@morganlewis.com
 300 S. Grand Avenue, Suite 2200
 3 Los Angeles, CA 90071
 Tel: +1.213.612.2500
 4 Fax: +1.213.612.2501

5 Brian T. Ortelere (*pro hac vice*)
 brian.ortelere@morganlewis.com
 6 1701 Market Street
 Philadelphia, PA 19103
 7 Tel: +1.215.963.5000
 Fax: +1.215.963.5001

8 [Additional Counsel on Next Page]

9 Attorneys for Defendants
 10 BOARD OF TRUSTEES OF
 SUPPLEMENTAL INCOME TRUST FUND;
 11 RICHARD BARBOUR; ROME A. ALOISE;
 KEITH FLEMING; CARLOS BORBA;
 12 and CLARK RITCHEY

13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FELIPE YBARRA and CESARIO
 SERRATO, Individually and as
 17 representatives of a class consisting of
 the participants and beneficiaries of the
 18 Supplemental Income 401(K) Plan,

19 Plaintiffs,

20 vs.

21 BOARD OF TRUSTEES OF
 SUPPLEMENTAL INCOME TRUST
 22 FUND, *et al.*,

23 Defendants.

Case No. 8:17-cv-02091-JVS-E

**STIPULATED PROTECTIVE
 AND CONFIDENTIALITY
 ORDER**

Complaint filed: Nov. 30, 2017

Magistrate Judge: Charles F. Eick

1 [Additional Counsel]

2 Donald L. Havermann (*pro hac vice*)
donald.havermann@morganlewis.com
3 Sean K. McMahan (*pro hac vice*)
sean.mcmahan@morganlewis.com
4 1111 Pennsylvania Avenue, NW
Washington, DC 20004
5 Tel: +1.202.739.3000
Fax: +1.202.739.3001

6 Attorneys for Defendants

7
8 FRANK SIMS & STOLPER LLP
Andrew D. Stolper (Bar No. 205462)
9 astolper@lawfss.com
Jason M. Frank (Bar No. 190957)
10 jfrank@lawfss.com
Scott H. Sims (Bar No. 234148)
11 ssims@lawfss.com
19800 MacArthur Blvd., Suite 855
12 Irvine, California 92612
Telephone: (949) 201-2400
13 Facsimile: (949) 201-2405

14 FRANKLIN D. AZAR & ASSOCIATES
Jonathan Parrott (Bar No. 248652)
15 parrottj@fdazar.com
14426 East Evans Avenue
16 Aurora, CO 80014
Telephone: (303) 757-3300
17 Facsimile: (303) 759-5203

18 Attorneys for Plaintiffs

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GOOD CAUSE STATEMENT

This action involves claims arising under the Employee Retirement Income Security Act of 1974 (“ERISA”). This action is likely to involve commercial, financial, individually identifiable, protected, confidential, and/or proprietary information for which special protection from public disclosure, and from use for any purpose other than prosecution of this action, is warranted. In particular, discovery in this action is likely to involve the identification of a significant amount of personal financial information. Furthermore, certain documents and information exchanged in discovery may be of a particularly sensitive and confidential nature, such that public disclosure of such documents or information could cause competitive injury to the parties to this litigation or to certain third parties.

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over the confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for trial, to address their handling at the end of the litigation, and to serve the ends of justice, a protective order for such information is 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 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.

STIPULATION

Plaintiffs Felipe Ybarra and Cesario Cerrato (“Plaintiffs”) and Defendants the Board of Trustees of the Supplemental Income Trust Fund, Richard Barbour, Rome A. Aloise, Keith Fleming, Carlos Borba, and Clark Ritchey (“Defendants”) (collectively, the “Parties”), by and through their respective counsel, and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, hereby stipulate and agree to

1 the terms of this Stipulated Protective Order as follows, subject to the Definitions
2 and other provisions contained herein.

3 1. **DEFINITIONS**

- 4 a. Action: *Ybarra, et al. v. Board of Trustees of Supplemental Income*
5 *Trust Fund, et al.*, Civil Action No. 8:17-cv-02091 (C.D. Cal.).
- 6 b. “CONFIDENTIAL” Information or Items: information (regardless
7 of how it is generated, stored or maintained) or tangible things that
8 qualify for protection under Federal Rule of Civil Procedure 26(c),
9 and as specified above in the Good Cause Statement.
- 10 c. Designating Party: a Party or Non-Party that designates
11 information or items that it produces in disclosures or in responses
12 to discovery as “CONFIDENTIAL.”
- 13 d. Discovery Material: all items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained
15 (including, among other things, testimony, transcripts, and tangible
16 things), that are produced or generated in disclosures or responses
17 to discovery in this matter.
- 18 e. Expert: a person with specialized knowledge or experience in a
19 matter pertinent to the litigation who has been retained by a Party
20 or its counsel to serve as an Expert witness or as a consultant in this
21 Action.
- 22 f. Non-Party: any natural person, partnership, corporation,
23 association, covered entity (as defined by 45 C.F.R. § 160.103), or
24 other legal entity not named as a Party to this action.
- 25 g. Party: any party to this Action, including all of its officers,
26 directors, employees, consultants, retained Experts, and counsel of
27 record (and their support staffs).
- 28

1 h. Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

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

5 2. This Protective Order shall apply to all documents, materials, and
6 information, including without limitation documents produced, answers to
7 interrogatories, responses to requests for admission, deposition testimony, and other
8 information disclosed pursuant to the disclosure or discovery duties created in the
9 Action by the Federal Rules of Civil Procedure.

10 3. As used in this Protective Order, the term “document” shall mean all
11 documents, electronically stored information, and tangible things within the scope
12 of Fed. R. Civ. P. 26(a)(1)(A)(ii) and 34(a)(1). A draft or non-identical copy is a
13 separate document within the meaning of this term.

14 4. Discrete Discovery Materials that the Producing Party reasonably
15 believes in good faith to include personal information, trade secrets, or sensitive
16 strategic, technical, marketing, or financial information and that the Producing
17 Party reasonably fears would, if publicly-disclosed, cause competitive injury (to the
18 Producing Party or third parties), may be designated as “CONFIDENTIAL” by the
19 Producing Party. The Party who so designates Discovery Materials as
20 CONFIDENTIAL may at any time revoke that designation. No Party or third party
21 producing documents subject to this Order will designate Discovery Materials as
22 Confidential unless a particularized, specific assessment was made as to each
23 document. Information that is available to the public shall not be designated
24 CONFIDENTIAL.

25 5. A Party intending to file any Discovery Materials designated as
26 CONFIDENTIAL shall follow the procedures set forth in Local Rule 79-5.2.2.
27 Nothing in this paragraph shall prevent the Producing Party (with the consent of
28 any relevant third-party) from filing materials, including any Expert reports,

1 deposition testimony, or any other Discovery Material designated by the Producing
2 Party as CONFIDENTIAL because of its reference to CONFIDENTIAL documents
3 or information, with the Court and without seal; such filing shall constitute a
4 revocation by the Producing Party of the CONFIDENTIAL designation associated
5 with such Discovery Materials.

6 6. If any Party determines during the course of this action that this Order
7 does not sufficiently protect the confidentiality of information produced or
8 disclosed, or that this Order should otherwise be modified, it may seek to modify
9 this Order with the agreement of the other Parties. If such agreement cannot be
10 obtained, any Party may seek modification of this Order by motion to the Court.

11 7. Discovery Materials designated as CONFIDENTIAL shall not,
12 without the consent of the Designating Party or further Order of the Court, be
13 disclosed or made available in any way to any person other than:

- 14 a. attorneys actively working on this case;
- 15 b. persons regularly employed or associated with the attorneys
16 actively working on the case, whose assistance is required by
17 said attorneys in the preparation for trial, at trial, or at other
18 proceedings in this case;
- 19 c. the Parties in this case;
- 20 d. witnesses in the course of deposition or trial testimony where
21 counsel has a reasonable and good faith belief that examination
22 with respect to the document is appropriate in conducting
23 discovery or for trial purposes in this case, and any person who
24 is being prepared to testify where counsel has a reasonable and
25 good faith belief that such person will be a witness in this case
26 and that his examination with respect to the document is
27 necessary in connection with such testimony;

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- 1 e. Expert witnesses and consultants retained in connection with
- 2 this case (and persons regularly employed or associated with
- 3 the expert or consultant who are actively working on the
- 4 matter), to the extent such disclosure is necessary for
- 5 depositions, preparation, trial or other proceedings in this case;
- 6 f. data recovery vendors, graphic consultants or outside copy
- 7 services;
- 8 g. qualified persons taking stenographic or video testimony
- 9 involving such material and their necessary clerical personnel;
- 10 h. the Court and its employees (“Court Personnel”) in this case;
- 11 i. to any state or federal governmental entity or agency; and
- 12 j. other persons by written agreement of all the Parties or as
- 13 authorized by the Court.

14 8. Prior to disclosing Discovery Materials designated as
15 CONFIDENTIAL to any person listed above (other than the individuals listed in
16 Paragraph 7(a)-(b), (g), and (h)), counsel shall provide such person with a copy of
17 this Protective Order and obtain from such person an on-the-record
18 acknowledgment stating that he or she has read this Protective Order and agrees to
19 be bound by its provisions, or a written acknowledgement (in the form attached as
20 Exhibit A). All such acknowledgments shall be retained by counsel and shall be
21 subject to in camera review by the Court if good cause for review is demonstrated
22 by opposing counsel.

23 9. Nothing in this Order shall prohibit disclosure of a Document
24 designated CONFIDENTIAL to a person identified in such Document as its
25 author, addressee, or person who is designated on the original document to receive
26 a copy. In addition, nothing in this Order shall prohibit disclosure of a Document
27 designated CONFIDENTIAL to a person identified in Discovery Material as
28 having previously received that designated Document. If Discovery Material

1 designated CONFIDENTIAL makes specific reference to the conduct or statement
2 of a specific person, counsel may discuss such conduct or statement with such
3 person, provided that no portion of the Discovery Material other than that which
4 specifically refers to such person's conduct or statement is revealed.

5 10. Whenever a deposition involves the disclosure of Discovery Materials
6 designated as CONFIDENTIAL, the portions of the deposition involving the
7 disclosure of Discovery Materials designated as CONFIDENTIAL may themselves
8 be designated CONFIDENTIAL. Such designation shall be made on the record
9 during the deposition whenever possible, but a Party may designate portions of
10 depositions as CONFIDENTIAL after transcription, provided written notice of the
11 page and line numbers being designated as CONFIDENTIAL is given to all counsel
12 of record within thirty (30) days after notice by the court reporter of the completion
13 of the transcript.

14 11. In the event that a Non-Party or another party produces documents that
15 a Party wishes in good faith to designate as CONFIDENTIAL, the Party wishing to
16 make that designation must do so within thirty (30) business days of receipt, and
17 identify the information by bates label or, where not bates labeled, by document
18 title and page number(s) or page and line number(s). The non-designating parties
19 shall thereafter mark the document or information in the manner requested by the
20 Designating Party and thereafter treat the document or information in accordance
21 with such marking. The Parties shall not make use of any document or information
22 until the time to make a CONFIDENTIAL designation has expired.

23 12. A Party may object to the designation of particular Discovery
24 Materials designated as CONFIDENTIAL by giving written notice to the
25 Designating Party. If challenged, the written notice shall identify the information to
26 which the objection is made. If the Parties cannot resolve the objection through a
27 meet-and-confer process within ten (10) court days after the time the notice is
28 received, the dispute shall be resolved by motion pursuant to Local Rule 37-2's

1 Joint Stipulation procedure, and it shall be the obligation of the Designating Party
2 to serve on the objecting party its portion of the Joint Stipulation within (5) court
3 days after the conclusion of that meet-and-confer process. If the Designating Party
4 does not timely serve its portion of the Joint Stipulation, the disputed information
5 shall not be treated as CONFIDENTIAL under the terms of this Protective Order.
6 If a Joint Stipulation is timely served, the disputed information shall be treated as
7 CONFIDENTIAL under the terms of this Protective Order until the Court rules on
8 the motion. In connection with a motion filed under this provision, the Designating
9 Party shall bear the burden of establishing that good cause exists for the disputed
10 information to be treated as CONFIDENTIAL.

11 13. Neither the attorney-client privilege nor the work product protection is
12 waived by inadvertent disclosure connected with this litigation. The inadvertent
13 disclosure by a Producing Party of privileged or protected documents, information,
14 or materials in this litigation as part of a production shall not itself constitute a
15 waiver for any purpose. A Producing Party which seeks the return of documents
16 under this paragraph may claw back the documents that should have been withheld
17 on the basis of the attorney-client and/or work product protection. Upon receipt of
18 such a request for return, the Party to whom the documents were produced must
19 segregate the documents (and all copies thereof) and may return, sequester, or
20 destroy them within five (5) business days, unless the Party seeks to challenge the
21 request for return under the procedure described in Paragraph 14, below. All
22 images of withheld privileged information and any notes or communications
23 reflecting the content of such documents shall either be destroyed or sequestered.

24 14. The Receiving Party may, within thirty (30) business days of receiving
25 a request for return under Paragraph 13, seek an order from the Court directing the
26 production of the document on the ground that the claimed privilege or protection is
27 invalid or inapplicable. However, the inadvertent production of the document in
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1 the course of this action shall not constitute grounds for asserting invalidity or
2 waiver of the privilege or protection.

3 15. Nothing in this Protective Order overrides any ethical responsibilities
4 of any attorney to refrain from examining or disclosing materials that the attorney
5 knows or reasonably should know to be privileged and to inform the Producing
6 Party that such materials have been produced.

7 16. At the conclusion of this case, and any appeal, and upon written
8 request by the Designating Party, each document and all copies thereof which have
9 been designated as CONFIDENTIAL shall be returned to the Party or Non-Party
10 that designated it CONFIDENTIAL, or the Receiving Party may elect to destroy
11 the information. Where the Parties agree to return the information designated
12 CONFIDENTIAL, the returning Party shall provide all Parties a written
13 certification of counsel confirming that all information designated
14 CONFIDENTIAL has been returned. Where the Parties agree to destroy
15 information designated as CONFIDENTIAL, the destroying Party shall provide all
16 Parties with a written certification of counsel confirming the destruction of all
17 information designated as CONFIDENTIAL. This provision shall not preclude the
18 Parties from maintaining for their records a secured electronic copy of any
19 document that is designated as CONFIDENTIAL in this case.

20 17. This Protective Order shall not be deemed or construed as a waiver of
21 any right to object to the furnishing of information in response to any discovery
22 request. Nor shall this Protective Order be deemed or construed as a waiver of the
23 attorney-client, work product, or any other privilege, or of the rights of any Party,
24 person or entity to oppose the production of any documents or information on any
25 permissible grounds. Further, this Protective Order does not limit, restrict or
26 otherwise affect the ability of any Party to seek the production of documents,
27 testimony or information from any source.

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1 18. Neither this Protective Order nor a Party's designation of particular
2 Discovery Materials as CONFIDENTIAL affects or establishes the admissibility or
3 waiver of any right to object to the admissibility at trial of any Discovery Materials
4 covered by this Protective Order.

5 19. If any party in possession of information designated as
6 CONFIDENTIAL is served with a subpoena, request for production of documents,
7 or other similar legal process in another proceeding seeking production of
8 information designated as CONFIDENTIAL, the Receiving Party shall give written
9 notice, by electronic mail, to the undersigned counsel for the party that produced
10 the information designated as CONFIDENTIAL, within five (5) business days of
11 receipt of the subpoena. To the extent permitted by applicable law, the Receiving
12 Party shall not produce any of the Producing Party's information designated as
13 CONFIDENTIAL for a period of at least ten (10) business days after providing the
14 required notice to the Producing Party. If, within ten (10) business days of
15 receiving such notice, the Producing Party provides written notice to the Receiving
16 Party that it opposes production of its information designated as CONFIDENTIAL,
17 the Receiving Party shall not thereafter produce such information, except pursuant
18 to a court order (or other order which subjects the party to penalties for
19 noncompliance) requiring compliance with the subpoena, request for production, or
20 other legal process. The Producing Party shall be solely responsible for asserting
21 any objection to the requested production. The Receiving Party shall provide a
22 copy of this Order to the Third-Party requesting production of information
23 designated as CONFIDENTIAL. This Protective Order does not require the
24 Receiving Party or anyone else covered by this Order to challenge or appeal any
25 such order requiring production of information designated as CONFIDENTIAL
26 covered by this Order, or to subject itself to any penalties for noncompliance with
27 any such order, or to seek any relief from a court.

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1 20. This Order applies only to pre-trial proceedings and does not apply to
2 use at trial of Discovery Material marked as CONFIDENTIAL. If the parties have
3 not reached agreement as to confidentiality of a listed trial exhibit, the Party that
4 designated the Discovery Material as CONFIDENTIAL may file a motion for
5 protective order with regard to the confidentiality of the Discovery Material at trial
6 within ten (10) days after service of the other Party's list of trial exhibits in their
7 pre-trial submissions. To the extent any Discovery Material designated as
8 CONFIDENTIAL pursuant to the terms of this Order is proposed for use at trial,
9 but was not listed as a trial exhibit prior to trial, the parties shall attempt to resolve
10 any issues regarding such confidentiality by agreement (which, if the agreement
11 provides the document will be treated as Confidential at trial, shall be approved by
12 the Court) or, if no agreement can be reached, by asking the Court to address the
13 issue prior to the introduction of the document as evidence.

14 21. The terms of this Protective Order shall survive the termination of this
15 action, and all protections of this Protective Order shall remain in full effect in
16 perpetuity.

17 22. The Court retains the right to allow, sua sponte or upon motion,
18 disclosure of any subject covered by this Order or to modify this Order at any time
19 in the interests of justice.

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1 **IT IS SO STIPULATED AND APPROVED.**

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DATED: September 18, 2018

FRANK SIMS & STOLPER LLP
Jason M. Frank
Scott H. Sims
Andrew D. Stolper

FRANKLIN D. AZAR & ASSOCS. PC
Jonathan S. Parrott
Franklin D. Azar
Paul R. Wood

By /s/ Scott H. Sims
Scott H. Sims

Attorneys for Plaintiffs
FELIPE YBARRA and
CESARIO SERRATO

DATED: September 18, 2018


MORGAN, LEWIS & BOCKIUS LLP
Lisa Veasman
Brian T. Ortelere
Donald L. Havermann
Sean K. McMahan

By /s/ Sean K. McMahan
Sean K. McMahan

Attorneys for Defendants
BOARD OF TRUSTEES OF
SUPPLEMENTAL INCOME
TRUST FUND; RICHARD
BARBOUR; ROME A. ALOISE;
KEITH FLEMING; CARLOS
BORBA; and CLARK RITCHEY

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 9/18/18



Hon. Charles F. Eick
U.S. Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
_____ [date] in the case of *Ybarra, et al. v. Board of Trustees of Supplemental
Income Trust Fund, et al.*, Civil Action No. 8:17-cv-02091 (C.D. Cal.). I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order. I further agree to submit to the jurisdiction of the United
States District Court for the 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 _____
_____ [print or type full name] of _____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____