

1 KEITH A. JACOBY, Bar No. 150233  
2 LITTLER MENDELSON  
3 A Professional Corporation  
4 2049 Century Park East, 5th Floor  
5 Los Angeles, CA 90067.3107  
6 Telephone: (310)553-0308  
7 Facsimile: (310)553-5583  
8 kjacoby@littler.com

9 LAURA E. HAYWARD, Bar No. 204014  
10 LITTLER MENDELSON  
11 A Professional Corporation  
12 650 California Street, 20th Floor  
13 San Francisco, CA 94108.2693  
14 Telephone: (415) 433-1940

15 Attorney for Defendants  
16 ABM INDUSTRIES INCORPORATED; ABM  
17 JANITORIAL SERVICES, INC. and ABM  
18 JANITORIAL NORTHERN CALIFORNIA

19 UNITED STATES DISTRICT COURT  
20 EASTERN DISTRICT OF CALIFORNIA

21 U.S. EQUAL EMPLOYMENT  
22 OPPORTUNITY COMMISSION,

Case No. 1: 07 CV 01428 LJO-TAG

**STIPULATED PROTECTIVE ORDER**

23 Plaintiff,

24 ERIKA MORALES and ANONYMOUS  
25 PLAINTIFFS ONE THROUGH EIGHT,

26 Plaintiff Intervenors,

27 v.

28 ABM INDUSTRIES INCORPORATED  
and ABM JANITORIAL SERVICES,  
INC.; ABM JANITORIAL NORTHERN  
CALIFORNIA; JOSE VASQUEZ; Does 1  
- 10 inclusive,

Defendants.

Documents and information subject to discovery in this action reflect, or may reflect, confidential corporate information of Defendants ABM INDUSTRIES, INC. and ABM JANITORIAL SERVICES, INC.; ABM JANITORIAL NORTHERN CALIFORNIA ("Defendants") and/or confidential information regarding the employees and/or former employees of Defendants. The following Stipulation and Protective Order shall govern the production, disclosure, and use of such confidential information in this action.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, through their respective undersigned counsel, that a Court may enter the following Protective Order pursuant to Federal Rules of Civil Procedure 26(c) and 37(b), and Local Rules 39-140 and 39-141, in this action as follows:

1. Confidential Information

For purposes of this Protective Order, "confidential information" means any type or classification of information, whether originals, copies or in redacted form, that would reveal the following information:

(a) Addresses, phone numbers, and other contact information of Defendants' current or former employees.

(b) Documents pertaining to complaints of sexual assault and/or sexual harassment allegedly occurring in Defendant's workplace.

No information shall be claimed to be confidential unless counsel making the claim has a reasonable, good faith belief that the information meets the criteria specified above. Once so designated, confidential information shall be subject to the protection of this Protective Order unless such protection is expressly waived in writing by all of the stipulating parties or removed in whole or in part upon further order of the Court.

2. Time and Manner of Designation

Counsel may designate documents and writings as confidential at the time of production any time during a deposition, or within thirty (30) days after delivery of deposition transcripts containing confidential documents. Any confidential documents inadvertently not

1 designated as confidential at the time of production or within thirty (30) days after delivery of  
2 deposition transcripts may be designated as confidential at any time prior to trial.

3 The failure to designate information in accordance with this Protective Order or the  
4 failure to object to a designation at a given time shall not preclude the filing of a motion at a later  
5 time seeking to impose such a designation or challenge the propriety thereof.

6 3. Coverage

7 This Protective Order shall control the pretrial production, disclosure, and use of  
8 confidential information revealed by or to the stipulating parties or any of them, through deposition,  
9 through interrogatory responses, through production of documents, through other discovery, or  
10 through informal means. This Protective Order shall not constitute or be deemed to constitute any  
11 admission by any of the stipulating parties or a determination by the Court as to any contested issue  
12 in this case, including, without limitation, the existence or non-existence of a privacy interest or  
13 privilege relating to said confidential information or its admissibility at trial.

14 4. Use of Confidential Information at Trial Not Covered

15 This Protective Order applies only to information disclosed in the course of pretrial  
16 discovery in this action. Counsel for the stipulating parties agree to negotiate in good faith with  
17 respect to the procedure for utilizing confidential information at the trial of this action. Any dispute,  
18 regarding the use of any confidential information at the trial of this action will be resolved by the  
19 trial court.

20 5. Limits on Disclosure and Use

21 Documents and information obtained in discovery and designated confidential  
22 pursuant to this Protective Order shall only be disclosed to the following persons and entities for a  
23 purpose related to the prosecution and/or defense of this action:

- 24 a. The Parties;
- 25 b. The attorneys and legal staff of the Parties;
- 26 c. Witnesses, experts, consultants and other independent contractors  
27 retained or employed to consult with, advise or assist counsel in the  
28 preparation for or trial of this case, all of whom must agree in writing

1 to abide by this Order by signing the forms attached hereto as Exhibit  
2 "A." Said forms are to be kept in the custody of the respective parties  
3 and shall be submitted to the Court in camera only if requested by the  
4 Court.;

- 5 d. Employee or former employees of Defendants, which are not required  
6 to abide by this Order or sign any forms related to this Order if they  
7 only wish to see their own employment-related records; *last*  
8 e. Court personnel, including judges, ~~court commissioners~~, court  
9 reporters, law clerks, clerks and jurors engaged in proceedings in this  
10 case;  
11 f. Any governmental entity in response to a legitimate subpoena or  
12 administrative order from such governmental entity, which is  
13 authorized to issue the same, and the party receiving such subpoena or  
14 administrative order shall give prompt written notice by facsimile  
15 service of the receipt of such subpoena or order to other parties in this  
16 action, so that any party may make objection to the subpoena or order  
17 to the extent permitted by law; and  
18 g. In accordance with further orders of this Court.

19 As discussed further in paragraph 8 below, nothing in this Protective Order shall prevent any  
20 party from seeking to modify the terms of the Protective Order. When one party has expressly  
21 designated information as confidential in conformity with paragraphs 1 and 2 above, then the other  
22 parties and their respective counsel shall safeguard such designated confidential information against  
23 disclosure.

24 With respect to all parties other than the EEOC, information and documents subject to this  
25 Protective Order may be used only in connection with this litigation and not for any other legal,  
26 business or competitive purpose. With respect to all parties other than the EEOC, information sought  
27 and received pursuant to this Order, and any further information arising therefrom, may not be used  
28 in any other action pending against any party to this protective order that is unrelated to this action.

1 With respect to all parties other than the EEOC, the parties to this Order agree that they will not use  
2 information obtained through this Order as a means of obtaining discovery in any other civil action  
3 or administrative proceeding. With respect to all parties other than the EEOC, the confidential  
4 information is to be used for the purpose to the prosecution and/or defense of this action.

5 With respect to the EEOC, nothing in this Order should be construed to prohibit the EEOC  
6 from using the confidential information for any other purposes authorized by statute (Title VII, 42  
7 U.S.C. §§ 2000e *et seq.*), including the investigation and litigation of other matters. To the extent  
8 that the confidential information is to be used in this litigation, the EEOC is willing to abide by this  
9 protective order. To the extent that the confidential information is to be used for other purposes  
10 authorized by statute to the EEOC, including investigation of other matters, the EEOC is to follow  
11 the confidentiality provisions as stated in 706(b) and 709(e) of Title VII of the Civil Rights Act of  
12 1963, 42 U.S.C. §§ 2000e-5(b), 8(e).

13 If any information or documents subject to this Protective Order are furnished to any  
14 federal government agency by any party, the party furnishing the information or document shall  
15 simultaneously notify the agency of the existence of this Protective Order and provide a copy of this  
16 Order to the agency.

17 This Order is entered solely for the purpose of facilitating the exchange of documents  
18 and information between the parties to this action without involving the Court unnecessarily in the  
19 process. Nothing in this Order, nor the production of any information or document under the terms  
20 of this Order, nor any proceedings pursuant to this Order, shall be deemed to have the effect of an  
21 admission or waiver by either party or of altering the confidentiality or nonconfidentiality of any  
22 such document or information or altering any existing obligation of any party or the absence thereof.  
23 The parties to this Order agree that they will not use this Order or the existence of this Order to limit  
24 discovery in any other civil action or administrative proceeding.

25 6. Lodging or Filings With the Court

26 All confidential information lodged or filed with the Court, and any pleading, motion,  
27 deposition or other paper filed with or otherwise submitted to the Court disclosing designated  
28 confidential information, shall, as permitted by the Court, (1) be submitted for lodging or filing in

1 sealed envelopes as specified in paragraph 7 below, and (2) shall be subject to the Local Rules of  
2 this Court with respect to the sealing of documents, which require a separate sealing Order for  
3 documents to be sealed and filed, and (3) be available for review only for purposes of this litigation  
4 by the persons and parties described in paragraph 5 as eligible to receive designated and confidential  
5 information.

6  
7 7. Notice of Coverage by Order

8 Portions of any pleading, motion, affidavit, transcript of any deposition or other paper  
9 filed with the Court which constitutes, identifies, quotes or refers to designated confidential  
10 information shall, as permitted by the Court, be filed with the Court only in sealed envelopes bearing  
11 the following statement:

12 **CONFIDENTIAL: THIS ENVELOPE CONTAINS DOCUMENTS**  
13 **AND INFORMATION FILED SUBJECT TO A PROTECTIVE ORDER.**

14 Deposition transcripts and other discovery materials which have been designated  
15 confidential information will be marked by the court reporter or by the parties or their counsel on the  
16 cover of the transcripts or in other prominent locations to reflect this Protective Order. Pursuant to  
17 this Court's Local Rules, a sealing Order is required before any document can be sealed and filed.

18 8. Modification of Order

19 Material disclosing designated confidential information may be removed from the  
20 restrictions of this Protective Order only upon the written agreement of the stipulating parties or by  
21 Court Order.

22 In the event that the stipulating parties disagree as to the designation of materials as  
23 confidential, or are unable to reach agreement regarding removing from the restrictions of this  
24 Protective Order any document or other material claimed to be confidential, the stipulating party  
25 contesting confidentiality may, upon motion with notice to the other stipulating party, seek a Court  
26 Order removing the contested information from the terms of this Protective Order. Upon noticed  
27 motion by either stipulating party, the Court shall have authority to modify the terms of this  
28 Protective Order for good cause shown.

1           9.     Return of Designated Confidential Information by all parties other than the  
2                 EEOC

3           With respect to all parties other than the EEOC, when the action has terminated by  
4 settlement, judgment or dismissal and all appeals have been exhausted, all designated confidential  
5 information shall be returned to the party producing the documents, including all copies thereof,  
6 upon said party's request. Such request shall be made within sixty (60) days of termination of the  
7 action.

8           10.    Destruction or Return of Designated Confidential Information by EEOC

9           With respect to the EEOC, at the final conclusion of this action (including any  
10 appeals) and unless the Court orders otherwise, any confidential materials provided to the EEOC, as  
11 outlined above, and any copies thereof which have been made shall be stored and destroyed  
12 according to the EEOC Records Disposition Program, EEOC Directives Transmittal Order 201.001.  
13 At the final conclusion of this action (including any appeals) and unless the Court orders otherwise,  
14 any confidential materials provided to parties other than the EEOC shall be returned to the party  
15 producing the documents, including all copies thereof, upon said party's request. Such request to  
16 any party other than the EEOC shall be made within sixty (60) days of the final conclusion of this  
17 action (including any appeals).

18           11.    Limits on Scope of Protective Order

19           Nothing in this Protective Order shall be construed to relieve any party from the  
20 obligation to respond timely to discovery requests, nor shall this Protective Order be construed as a  
21 waiver of the right to assert any objection to a discovery request. To the extent that a party produces  
22 documents or information pursuant to this Protective Order that are covered, or believed in good  
23 faith to be covered, by the attorney work product doctrine or attorney-client communication  
24 privilege or any other privilege, no waiver of the attorney work product doctrine or attorney-client  
25 privilege or any other privilege shall be construed as a result of that production as it relates, or may  
26 relate, to the documents produced, or otherwise. Neither shall this Protective Order be construed so  
27 as to prejudice the right of any party hereto to file and use a designed document in this Court in  
28 connection with motions, pretrial proceedings, settlement conference, trial, or any other hearing or

proceeding in this matter, so long as the provisions of this Protective Order are complied with. Nothing in this Protective Order shall operate as an admission by any party that any particular document is, or is not, admissible in evidence at the trial of this action.

12. Counterparts

This Stipulation may be executed in counterparts, with any executed counterpart able to serve as the original.

**IT IS SO STIPULATED.**

LITTLER MENDELSON

Date: January 13 , 2009

/s/ Laura E. Hayward  
Keith A. Jacoby  
Laura E. Hayward  
Attorneys for Defendant  
ABM Industries Incorporated; ABM  
Janitorial Services, Inc. and ABM  
Janitorial Services Northern  
California

STRAPP & STRAPP

Date: January 13 , 2009

/s/ W. Joseph Strapp  
W. Joseph Strapp  
Attorney for Defendant  
Jose Vasquez

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Date: January 13 , 2009

/s/ Lorena Garcia  
Victor Viramontes  
Lorena Garcia  
Attorneys for Plaintiff U.S. EEOC

LAW OFFICES OF MALLISON &  
MARTINEZ

Date: January 13 , 2009

/s/ Hector R. Martinez  
Stan Mallison  
Hector R. Martinez  
Attorneys for Plaintiff- Intervenors



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO ORDERED.

January 14, 2009  
Dated

  
UNITED STATES Magistrate Judge

Firmwide:88067384.2 054667.1005

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1  
2  
3 I, , declare under penalty of perjury that I have read in its entirety and  
4 understand the Stipulated Protective Order that was issued by the United States District Court for the  
5 ~~Central~~ <sup>Eastern</sup> District of California in the case of U.S. Equal Opportunity Commission, et al. v. ABM  
6 Industries Incorporated, et al., Case No. 1:07 CV 01428 LJO-TAG. I agree to comply with and to be  
7 bound by the terms of this Stipulated Protective Order, which prohibits me from disclosing, in any  
8 manner, any information or item that is subject to this Stipulated Protective Order. I understand that  
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
10 further agree to submit to the jurisdiction of the United States District Court for the Eastern District  
11 of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
12 enforcement proceedings occur after termination of this action.  
13

14 Date:

15 City and State where sworn and signed:

16 Printed name:

17  
18 Signature:

19 Firmwide:88096274.1 054667.1005  
20  
21  
22  
23  
24  
25  
26  
27  
28