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 ABM INDUSTRIES, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION

Plaintiff,

v.

ABM INDUSTRIES INC.,

Defendant.

Case No. CV9-4593 BZ

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby

1 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
2 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
3 discovery and that the protection it affords from public disclosure and use extends only to the limited
4 information or items that are entitled to confidential treatment under the applicable legal principles. The
5 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
6 not entitle them to 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 party seeks permission
8 from the court to file material under seal.
9

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
12 items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
14 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
15 26(c).
16

17 2.3 Counsel (without qualifier): Defendant’s Outside Counsel of Record and House Counsel, and
18 Counsel for Plaintiff EEOC, (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or items that it produces
20 in disclosures or in responses to discovery as “CONFIDENTIAL.”

21 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
22 manner in which it is generated, stored, or maintained (including, among other things, testimony,
23 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
24 in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
26 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
27 in this action.
28

1 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does
2 not include Outside Counsel of Record or any other outside counsel.

3 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not
4 named as a Party to this action.

5 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are
6 retained to represent or advise a party to this action and have appeared in this action on behalf of that
7 party or are affiliated with a law firm which has appeared on behalf of that party.

8 2.10 Party: any party to this action, including all of its officers, directors, employees, consultants,
9 retained experts, and Outside Counsel of Record (and their support staffs), as well as Charging Parties
10 named by Plaintiff EEOC, and other similarly situated individuals on whose behalf Plaintiff EEOC seeks
11 relief.
12

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
14 this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
16 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
17 retrieving data in any form or medium) and their employees and subcontractors.

18 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL.”
20

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
22 Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected Material (as
25 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
26 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
27 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
28

1 conferred by this Stipulation and Order do not cover the following information: (a) any information that
2 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
3 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this
4 Order, including becoming part of the public record through trial or otherwise; and (b) any information
5 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
6 disclosure from a source who obtained the information lawfully and under no obligation of
7 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
8 separate agreement or order.
9

10 4. DURATION

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

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
20 Party that designates information or items for protection under this Order must take care to limit any such
21 designation to specific material that qualifies under the appropriate standards. The Designating Party
22 must designate for protection only those parts of material, documents, items, or oral or written
23 communications that qualify – so that other portions of the material, documents, items, or
24 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
25 Order.
26

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
28 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or

1 retard the case development process or to impose unnecessary expenses and burdens on other parties)
2 expose the Designating Party to sanctions.

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
7 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
8 Material that qualifies for protection under this Order must be clearly so designated before the material is
9 disclosed or produced.

10 Designation in conformity with this Order requires:

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

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
2 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,
3 all protected testimony.

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

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
11 qualified information or items does not, standing alone, waive the Designating Party's right to secure
12 protection under this Order for such material. Upon timely correction of a designation, the Receiving
13 Party must make reasonable efforts to assure that the material is treated in accordance with the provisions
14 of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality
17 at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary
18 to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
19 delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by
20 electing not to mount a challenge promptly after the original designation is disclosed.
21

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
23 providing written notice of each designation it is challenging and describing the basis for each challenge.
24 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
25 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
26 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
27 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
28

1 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
2 belief that the confidentiality designation was not proper and must give the Designating Party an
3 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
4 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
5 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
6 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
7 timely manner.
8

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the
10 Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
11 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
12 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
13 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that
14 the movant has complied with the meet and confer requirements imposed in the preceding paragraph.
15 Failure by the Designating Party to make such a motion including the required declaration within 21 days
16 (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged
17 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
18 designation at any time if there is good cause for doing so, including a challenge to the designation of a
19 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be
20 accompanied by a competent declaration affirming that the movant has complied with the meet and
21 confer requirements imposed by the preceding paragraph.
22

23 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
24 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
25 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
26 Designating Party has waived the confidentiality designation by failing to file a motion to retain
27 confidentiality as described above, all parties shall continue to afford the material in question the level of
28

1 protection to which it is entitled under the Producing Party's designation until the court rules on the
2 challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced
5 by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or
6 attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
7 persons and under the conditions described in this Order. When the litigation has been terminated, a
8 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
12 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
13 or item designated "CONFIDENTIAL" only to:

14 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
15 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
16 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached
17 hereto as Exhibit A;

18 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
19 to whom disclosure is reasonably necessary for this litigation and who have signed the
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (c) to Charging Parties and similarly situated individuals on whose behalf Plaintiff EEOC
22 seeks relief, Party to whom disclosure is reasonably necessary for this litigation and who have signed the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
25 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
26

1 Bound” (Exhibit A);

2 (e) the court and its personnel;

3 (f) court reporters and their staff, professional jury or trial consultants, mock jurors, and
4 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed
5 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
7 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
8 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
9 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court
10 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

11 (h) the author or recipient of a document containing the information or a custodian or other
12 person who otherwise possessed or knew the information.

13
14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
15 LITIGATION

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

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
26 court order shall not produce any information designated in this action as “CONFIDENTIAL” before a
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1 determination by the court from which the subpoena or order issued, unless the Party has obtained the
2 Designating Party's permission. The Designating Party shall bear the burden and expense of seeking
3 protection in that court of its confidential material – and nothing in these provisions should be construed
4 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
5 court.

6
7 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
8 LITIGATION

9 (a) The terms of this Order are applicable to information produced by a Non-Party in this
10 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection
11 with this litigation is protected by the remedies and relief provided by this Order. Nothing in these
12 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

- 16 1. promptly notify in writing the Requesting Party and the Non-Party that some or
17 all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 18 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
19 this litigation, the relevant discovery request(s), and a reasonably specific description of the
20 information requested; and
- 21 3. make the information requested available for inspection by the Non-Party.

22 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
23 of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's
24 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
25 order, the Receiving Party shall not produce any information in its possession or control that is subject to
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27
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1 the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a court
2 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court
3 of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
6 to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving
7 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b)
8 use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
9 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such
10 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
11 as Exhibit A.
12

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
14 MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
16 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
17 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
18 whatever procedure may be established in an e-discovery order that provides for production without prior
19 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
20 agreement on the effect of disclosure of a communication or information covered by the attorney-client
21 privilege or work product protection, the parties may incorporate their agreement in the stipulated
22 protective order submitted to the court.
23

24 _____
25 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
26 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
27 interests in this court.
28

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
3 modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
5 Party waives any right it otherwise would have to object to disclosing or producing any information or
6 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
7 right to object on any ground to use in evidence of any of the material covered by this Protective Order.
8

9 12.3 Filing Protected Material. Without written permission from the Designating Party or a court
10 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
11 this action any Protected Material. A Party that seeks to file under seal any Protected Material must
12 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
13 order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-
14 5, a sealing order will issue only upon a request establishing that the Protected Material at issue is
15 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
16 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the
17 court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule
18 79-5(e) unless otherwise instructed by the court.
19

20 13. FINAL DISPOSITION.

21 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving
22 Party must return all Protected Material to the Producing Party or destroy such material, with the
23 exception that Plaintiff EEOC, as a federal agency, will retain one copy of all materials produced
24 pursuant to the provisions of the Federal Records Act. As used in this subdivision, "all Protected
25 Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or
26 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed the
27 Receiving Party must submit a written certification to the Producing Party (and, if not the same person or
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1 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where
2 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving
3 Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
5 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and
7 expert work product, even if such materials contain Protected Material. Any such archival copies that
8 contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4
9 (DURATION).

10
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 Dated: April 8, 2011

13 /S/

14 MATTHEW MARCA
15 ANDREW SPURCHISE
16 LITTLER MENDELSON
17 A Professional Corporation
18 Attorneys for Defendant
19 ABM JANITORIAL SERVICES --
20 NORTHERN CALIFORNIA

21
22 Dated: April 8, 2011

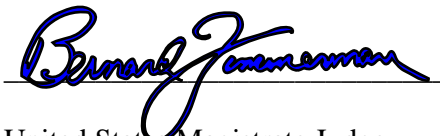
23 /S/

24 CINDY O'HARA
25 DEBRA SMITH
26 Attorneys for Plaintiff
27 EQUAL EMPLOYMENT OPPORTUNITY
28 COMMISSION

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: ___ April 18, 2011 _____



United States Magistrate Judge

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 Northern District of California on [date] in the case of **EEOC v. ABM Industries, Inc.**, NDCA CV9-4593 BZ. 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 Northern 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: _____