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6 IN THE UNITED STATES DISTRICT COURT  
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 INTERNATIONAL UNION OF OPERATING  
11 ENGINEERS, STATIONARY ENGINEERS  
12 LOCAL 39 PENSION TRUST FUND,  
individually and on behalf of all others  
similarly situated,

13 Plaintiff,

14 v.

15 THE BANK OF NEW YORK MELLON  
16 CORPORATION, *et al.*,

17 Defendants.  
\_\_\_\_\_ /

No. C 11-03620 WHA

**ORDER ENTERING  
PROTECTIVE ORDER  
SUBJECT TO  
STATED CONDITIONS**

18 The parties request entry of a protective order in this action. The parties have not been  
19 able to reach agreement on a proposed stipulated protective order. Because the Court deems it  
20 to be appropriate, the model stipulated protective order for standard litigation (appended as  
21 Exhibit A and modified to omit reference to stipulation) which has been approved by the  
22 Northern District of California is hereby **ENTERED**, subject to the following conditions,  
23 including adherence to the Ninth Circuit's strict caution against sealing orders (as set out  
24 below):

- 25 1. The parties must make a good-faith determination that any  
26 information designated "confidential" truly warrants protection under Rule 26(c)  
27 of the Federal Rules of Civil Procedure. Designations of material as  
28 "confidential" must be narrowly tailored to include only material for which there

1 is good cause. A pattern of over-designation may lead to an order un-designating  
2 all or most materials on a wholesale basis.

3 2. In order to be treated as confidential, any materials filed with the  
4 Court must be lodged with a request for filing under seal in compliance with Civil  
5 Local Rule 79-5. Please limit your requests for sealing to only those narrowly  
6 tailored portions of materials for which good cause to seal exists. Please include  
7 all other portions of your materials in the public file and clearly indicate therein  
8 where material has been redacted and sealed. Each filing requires an  
9 individualized sealing order; blanket prospective authorizations are no longer  
10 allowed by Civil Local Rule 79-5.

11 3. Chambers copies should include all material — both redacted and  
12 unredacted — so that chambers staff does not have to reassemble the whole brief  
13 or declaration. Although chambers copies should clearly designate which  
14 portions are confidential, chambers copies with confidential materials will be  
15 handled like all other chambers copies of materials without special restriction, and  
16 will typically be recycled, not shredded.

17 4. In *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006),  
18 the Ninth Circuit held that *more* than good cause, indeed, “compelling reasons”  
19 are required to seal documents used in dispositive motions, just as compelling  
20 reasons would be needed to justify a closure of a courtroom during trial.  
21 Otherwise, the Ninth Circuit held, public access to the work of the courts will be  
22 unduly compromised. Therefore, no request for a sealing order will be allowed  
23 on summary judgment motions (or other dispositive motions) unless the movant  
24 first shows a “compelling reason,” a substantially higher standard than “good  
25 cause.” This will be true regardless of any stipulation by the parties. *Counsel are*  
26 *warned that most summary judgment motions and supporting material should be*  
27 *completely open to public view.* Only social security numbers, names of  
28 juveniles, home addresses and phone numbers, and trade secrets of a compelling

1 nature (like the recipe for Coca Cola, for example) will qualify. If the courtroom  
2 would not be closed for the information, nor should any summary judgment  
3 proceedings, which are, in effect, a substitute for trial. Motions *in limine* are also  
4 part of the trial and must likewise be laid bare absent compelling reasons. Please  
5 comply fully. Noncompliant submissions are liable to be stricken in  
6 their entirety.

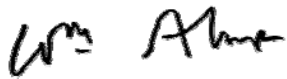
7 5. Any confidential materials used openly in court hearings or trial  
8 will not be treated in any special manner absent a further order.

9 6. This order does not preclude any party from moving to  
10 undesignate information or documents that have been designated as confidential.  
11 The party seeking to designate material as confidential has the burden of  
12 establishing that the material is entitled to protection.

13 7. The Court will retain jurisdiction over disputes arising from the  
14 proposed and stipulated protective order for only **NINETY DAYS** after final  
15 termination of the action.  
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17 **IT IS SO ORDERED.**

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19 Dated: January 5, 2012.

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22 WILLIAM ALSUP  
23 UNITED STATES DISTRICT JUDGE  
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