

1 Edward Gregory (CSBN 128375)  
 2 Jennifer Morrow (CSBN 185964)  
 3 STEPTOE & JOHNSON LLP  
 4 633 West Fifth Street, Suite 700  
 5 Los Angeles, California 90071  
 6 Telephone: (213) 439-9400  
 7 Facsimile: (213) 439-9599  
 8 egregory@steptoe.com  
 9 jmmorrow@steptoe.com

8 Attorneys for Defendants Board of  
 9 Administration of California Public  
 10 Employees' Retirement System (CalPERS)  
 11 and Anne Stausboll (Stausboll)

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 MICHAEL DRAGOVICH, MICHAEL  
 14 GAITLEY, ELIZABETH LITTERAL,  
 15 PATRICIA FITZSIMMONS, CAROLYN  
 16 LIGHT, and CHERYL LIGHT, on behalf of  
 themselves and all other similarly situated,

17 Plaintiffs,

18 vs.

19 UNITED STATES DEPARTMENT OF THE  
 20 TREASURY, TIMOTHY GEITHNER, in his  
 21 official capacity as Secretary of the Treasury,  
 22 United States Department of the Treasury,  
 23 INTERNAL REVENUE SERVICE, DOUGLAS  
 24 SHULMAN, in his official capacity as  
 25 Commissioner of the Internal Revenue Service,  
 26 BOARD OF ADMINISTRATION OF  
 27 CALIFORNIA PUBLIC EMPLOYEES'  
 28 RETIREMENT SYSTEM, and ANNE  
 STAUSBOLL, in her official capacity as Chief  
 Executive Officer, CalPERS,

Defendants.

) **CASE NO. 4:10-CV-01564-CW**  
 )  
 ) *Assigned to the Hon. Claudia Wilken*  
 )  
 ) **STIPULATION AND [PROPOSED]**  
 ) **PROTECTIVE ORDER**

STIPULATION AND [PROPOSED] PROTECTIVE ORDER

1 This stipulation is entered into by and between the parties, plaintiffs Michael Dragovich,  
2 *et al.* (Plaintiffs), state defendants the Board of Administration of California Public Employees'  
3 Retirement System (CalPERS) and Anne Stausboll (Stausboll), and federal defendants United  
4 States Department of the Treasury, Timothy Geithner, Internal Revenue Service, United States  
5 Department of the Treasury and Douglas Shulman (collectively the Federal Defendants), through  
6 their respective counsel.

7  
8 Upon entry by the Court, this stipulated Protective Order (this Order) shall govern the use  
9 and disclosure of all information designated "Private/Sensitive" or "Confidential" by or on  
10 behalf of any party during this litigation, including information so designated that has been  
11 furnished by or obtained through third parties.

12  
13 1. "Private/Sensitive" Designation. Information or materials designated  
14 "Private/Sensitive" include, but are not limited to, documents and any other materials containing  
15 or reflecting trade secrets; proprietary or confidential business information and other sensitive,  
16 non-public information; financial information; and state and federal tax-related materials.  
17 Information or materials designated "Private/Sensitive" also include, but are not limited to, any  
18 information or other materials that relate to any individual, including, but not limited to, any  
19 individual who is, has been or might become a participant in or beneficiary under any public  
20 employee benefit plan, program or system offered or administered by CalPERS and that are  
21 protected by the Health Insurance Portability and Accountability Act ("HIPAA"), California  
22 Government Code § 20230, or other federal or state privacy laws.

23  
24 2. "Confidential" Designation. Information designated "Confidential" shall be  
25 Protected Information the designating party believes, in good faith, will satisfy the requirements  
26 for sealing under Northern District of California Civil Local Rule 79-5.

1           3. Protected Information. Protected Information includes all information and materials  
2 designated either "Private/Sensitive" or "Confidential." Entry of this Order shall not obligate a  
3 party to produce Protected Information or other materials. The parties retain all rights to object  
4 to discovery, take discovery and move the Court for additional protective orders or other  
5 discovery orders, but shall make a good faith attempt to informally resolve all discovery disputes  
6 before resorting to motion practice.

7  
8           4. Designation by the Parties. This Order applies only to information and materials a  
9 party designates "Private/Sensitive" or "Confidential". Designation shall be made by marking  
10 documents or materials "Private/Sensitive" or "Confidential," by notifying all counsel in writing,  
11 or by agreement of counsel at depositions. Portions of testimony and exhibits may be designated  
12 "Private/Sensitive" or "Confidential," on the record at depositions or hearings or promptly after  
13 receipt of a transcript thereof by the designating party.

14  
15           5. Previously Produced or Filed Materials. Within ten days after entry of this Order, any  
16 party may, but is not required to, notify the other parties in writing that any materials produced  
17 or filed before entry of this Order are designated "Private/Sensitive" or "Confidential."

18  
19           6. Use of and Access to Information. Except upon further order of the Court or by  
20 express written consent of counsel of record, Protected Information shall be used solely for  
21 purposes of prosecuting or defending this action and shall not be disclosed to any persons other  
22 than:

- 23           (a) the attorneys for the parties who have entered an appearance in this proceeding and  
24           to other attorneys, paralegals, law clerks and clerical staff working with those  
25           attorneys;  
26           (b) the parties to this action and the parties' employees, agents or representatives, to the  
27           extent necessary to defend or prosecute this action;  
28           (c) designated expert witnesses or consultants retained or employed by any party for the

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

purposes of this action provided that said expert witnesses or consultants have executed a certificate of confidentiality which reads as follows: "I certify my understanding that materials containing Protected Information are provided to me subject to the terms and restrictions of the Court's Order of [Insert Date], 2010, in this action. I have been given a copy and have read that Order. I have had its meaning and effect explained to me by counsel for one of the parties to this action. I understand I am bound by the Order and shall not disclose these materials, and any copies, notes or other memoranda regarding information in such materials to others, except in accordance with the Order, and shall use them only for purposes of this proceeding";

- (d) any court reporter or typist recording or transcribing testimony in this action; and
- (e) other persons who may be specifically designated by consent of all attorneys of record in this action or pursuant to an order of the Court.

Materials and information designated "Private/Sensitive" may be used in discovery, Court filings, and trial proceedings in accordance with the rules of evidence. Materials designated "Confidential" shall not be filed with the Court or referred to in Court or other proceedings without first seeking a sealing order under the procedures set out in Local Rule 79-5. The designating party shall follow the procedures set out in Local Rule 79-5(a) and any non-designating party with Local Rule 79-5(d). Should the Court decline to issue a sealing order as to particular materials or information designated "Confidential," they shall be deemed to have been designated "Private/Sensitive."

7. Record of Disclosure. Where Protected Information is provided to an expert, counsel for the party making such disclosure to the expert shall maintain a record showing the name of the expert, the date the information was provided, a detailed description of the information provided, and a statement of the purpose for which the information is provided.

///

1           8. Safeguarding Confidential Information. The parties shall maintain all Protected  
2 Information in a secure and safe area and shall exercise due and proper care with respect to its  
3 storage, custody and use.

4  
5           9. Sealed Records. For avoidance of doubt, nothing in this Order requires the sealing of  
6 records containing Protected Information. Sealing of records, proposed sealing of records and  
7 filing of documents designated “Private/Sensitive” or “Confidential” shall be governed by Local  
8 Rule 79-5.

9  
10           10. No Publicity as to “Private/Sensitive” Materials Presented to the Court or at Trial.  
11 Presenting materials designated “Private/Sensitive” to the Court or trier of fact – whether by  
12 filing or lodging records, marking or moving for the admission of exhibits, questioning witnesses  
13 or any other means – shall not relieve the parties or others bound by this Order from the  
14 obligation to keep disclosure to a minimum. This obligation includes, but is not limited to, the  
15 obligation to refrain from publicizing such materials that have been presented to the Court,  
16 introduced for admission or admitted into evidence, as well as to refrain from publicizing the fact  
17 of such filing, introduction or admission.

18  
19           11. Final Disposition. At the conclusion of this action, including any appeals, all  
20 Protected Information furnished under the terms of this Stipulation and Order, all materials  
21 reflecting Protected Information, and all copies thereof, that are not in the custody of the Court,  
22 shall be returned to the party that furnished such Protected Information or shall be destroyed (and  
23 certified by affidavit as having been destroyed) by the party in possession thereof.  
24 Notwithstanding the foregoing, counsel for the parties may retain attorney work product  
25 materials.

26  
27           12. Preexisting rights. Producing Protected Information subject to this Order shall not  
28 limit the producing party’s preexisting rights to maintain, access, use or disclose such

1 information or materials apart from this litigation, as permitted by law.  
2

3       13. Challenging Designations. If a party disagrees with the designation of any particular  
4 document as “Private/Sensitive” or “Confidential,” the parties shall make a good faith effort to  
5 resolve the dispute informally. To that end, after a document is designated as “Private/  
6 Sensitive,” or “Confidential,” a party may contest such designation by written notice to the  
7 designating party. Within ten business days of receipt of such notice, the designating party shall  
8 provide a written response that either: (a) withdraws the designation or (b) states the basis upon  
9 which the designating party justifies the designation of confidentiality. If the parties cannot  
10 resolve the dispute between themselves, the party who disagrees with the “Private/Sensitive” or  
11 “Confidential” designation may file a motion to have the designation modified or removed.  
12 Until such motion is resolved by the Court, all materials designated “Private/Sensitive” or  
13 “Confidential” shall be treated as prescribed in this Order.  
14

15       14. Modification of Order. Nothing in this Order shall preclude any party from applying  
16 to the Court for an appropriate modification of this Order, provided that before such application,  
17 the parties shall make a good faith effort to resolve the matter by agreement. The parties reserve  
18 all rights to apply to the Court for an order (i) modifying this Order; (ii) seeking further  
19 protection against discovery or other use of Protected Information or documents, transcripts, or  
20 other materials reflecting Protected Information; or (iii) seeking further production, discovery,  
21 disclosure or use of claimed Protected Information and/or documents, transcripts, or other  
22 materials reflecting Protected Information.  
23

24       15. Inadvertent Failure to Designate. Inadvertent failure to designate documents or  
25 information as “Private/Sensitive” or “Confidential” at the time of production or disclosure shall  
26 not constitute a waiver of any party’s right to so designate them later. Once a belated  
27 designation has been made, the relevant materials shall be treated in accordance with this Order.  
28

1           16. Continuing Jurisdiction of the Court. Notwithstanding the conclusion of this action,  
2 the Order will continue to bind the parties and others subject to it; and the Court will retain  
3 jurisdiction to enter any orders necessary to prevent or remedy threatened or actual violations of  
4 it.

5  
6 DATED: July 26, 2010

STEPTOE & JOHNSON LLP

7  
8 By: 

Edward Gregory

Jennifer Morrow

Attorney for Defendants CalPERS and Stausboll

9  
10  
11 DATED: July \_\_, 2010

LEGAL AID SOCIETY -  
EMPLOYMENT LAW CENTER

12  
13  
14 By: \_\_\_\_\_

Claudia Center

Shelley Gregory

Attorneys for Plaintiffs Michael Dragovich, et al.

15  
16  
17 DATED: July 26, 2010

U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION

18  
19  
20 By: 

Jean Lin

Senior Counsel

Attorney for Federal Defendants

21  
22  
23  
24 **ORDER**

25  
26 **It is so ordered.**

27  
28 \_\_\_\_\_  
**DATED**

\_\_\_\_\_  
**UNITED STATES DISTRICT JUDGE**

7

STIPULATION AND [~~PROPOSED~~] PROTECTIVE ORDER

1 16. Continuing Jurisdiction of the Court. Notwithstanding the conclusion of this action,  
2 the Order will continue to bind the parties and others subject to it; and the Court will retain  
3 jurisdiction to enter any orders necessary to prevent or remedy threatened or actual violations of  
4 it.

5  
6 DATED: July \_\_\_, 2010 STEPTOE & JOHNSON LLP  
7  
8 By: \_\_\_\_\_  
9 Edward Gregory  
10 Jennifer Morrow  
11 Attorney for Defendants CalPERS and Stausboll

12 DATED: July 29, 2010 LEGAL AID SOCIETY –  
13 EMPLOYMENT LAW CENTER  
14  
15 By: /s/ Claudia Center \_\_\_\_\_  
16 Claudia Center  
17 Shelley Gregory  
18 Attorneys for Plaintiffs Michael Dragovich, et al.

19 DATED: July \_\_\_, 2010 U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION  
20  
21 By: \_\_\_\_\_  
22 Jean Lin  
23 Senior Counsel  
24 Attorney for Federal Defendants

25 **ORDER**

26 **It is so ordered.**

27  
28 8/3/2010  
**DATED** \_\_\_\_\_   
**UNITED STATES DISTRICT JUDGE**



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

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2010, I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

**STIPULATION AND [PROPOSED] PROTECTIVE ORDER**  
***PLEASE SEE ATTACHED SERVICE LIST.***

At Los Angeles, California, this 2nd day of July, 2010.

STEPTOE & JOHNSON LLP

By:           /s/ Edward G. Gregory            
Edward Gregory  
Jennifer Morrow  
STEPTOE & JOHNSON LLP  
633 W. 5th St., Suite 700  
Los Angeles, CA 90071  
Tel: (213) 439-9400  
Fax: (213) 439-9599

Attorneys for Defendants  
Board of Administration of California Public  
Employees' Retirement System (CalPERS) and  
Anne Stausboll (Stausboll)

1 SERVICE LIST

2 *Michael Dragovich, et al., v. Board of Administration of California Public*  
3 *Employees' Retirement System (CalPERS) and Anne Stausboll (Stausboll)*  
4 *Case No. 4:10-CV-01564-CW*

5 COUNSEL FOR PLAINTIFF

6 Claudia Center, Esq.  
7 Shelley A., Gregory, Esq.  
8 Elizabeth Kristen, Esq.  
9 Lori Rifkin, Esq.  
10 LEGAL AID SOCIETY –  
11 EMPLOYMENT LAW CENTER  
12 600 Harrison Street, Suite 120  
13 San Francisco, CA 94107  
14 Telephone: (415) 864-8848  
15 Facsimile: (415) 864-8199  
16 ccenter@las-elc.org  
17 sgregory@las-elc.org  
18 ekristen@las-elc.org  
19 lrifkin@las-elc.org

20 COUNSEL FOR THE UNITED STATES DEFENDANTS

21 Jean Lin  
22 U.S. DEPARTMENT OF JUSTICE  
23 CIVIL DIVISION  
24 Federal Programs Branch  
25 20 Massachusetts Ave., N.W.  
26 Washington, DC 20530  
27 202-514-3716  
28 Fax: 202-616-8470  
jean.lin@usdoj.gov