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15 (Attorney recitals cont. on next page)

16 **UNITED STATES DISTRICT COURT**
 17 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
 18

19 U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION,

20 Plaintiff,

21 ERIKA MORALES and
 22 ANONYMOUS PLAINTIFFS ONE
 23 THROUGH EIGHT,

24 Plaintiff-Intervenors,

25 v.

26 ABM INDUSTRIES
 INCORPORATED, et al.,

27 Defendants.
 28

} CASE NO. 1:07-CV-01428 LJO-JLT

} **JOINT STIPULATION**
 } **RESOLVING DISPUTES OVER**
 } **DEFENDANTS' SUBPOENAS OF**
 } **CERTAIN CLAIMANTS'**
 } **EMPLOYMENT RECORDS;**
 } **ORDER**

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18 Northern California

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1 On or about February 22, 2010, Defendants issued the following ten third
2 party subpoenas: Teresa Sanchez (subpoena to SCOBM), Maria Quintero
3 (subpoena to IHOP), Hilda Gomez (subpoena to VF Outdoor), Delia DeMejia
4 (subpoena to V&A Janitorial), Martha Castaneda Garcia (subpoena to Ruiz Foods),
5 Gloria Bernal (subpoena to TransWest Security Services), Patricia DeVera
6 (subpoena to Beacon Property Management), Maria Socorro Zapien (subpoena to
7 Zapien Electric), Maria Magana (subpoena to Varsity Contractors), and Maria
8 Cantoral (subpoena to WM Bolthouse Farms).

9 Defendants and Plaintiffs (EEOC and Plaintiff-Intervenors) disagree on the
10 subpoenas' timeliness and the merits of Defendants' ability to obtain and use the
11 documents specified in the subpoenas. However, in order to facilitate a resolution
12 of this matter without Court intervention, the parties stipulate, subject to Court
13 approval, to resolve the matter as follows:

14 **I. Defendant Will Withdraw Six Subpoenas**

15 Defendant will withdraw the subpoenas regarding Maria Quintero (subpoena
16 to IHOP), Hilda Gomez (subpoena to VF Outdoor), Delia DeMejia (subpoena to
17 V&A Janitorial), Martha Castaneda Garcia (subpoena to Ruiz Foods), Gloria
18 Bernal (subpoena to TransWest Security Services), and Patricia DeVera (subpoena
19 to Beacon Property Management) ("Section I Claimants). In exchange for
20 Defendants' withdrawal of the subpoenas, the EEOC agrees to not present
21 evidence of ongoing emotional distress damages regarding the claims of Maria
22 Quintero, Hilda Gomez, Delia DeMejia, Martha Castaneda Garcia, Gloria Bernal,
23 and Patricia DeVera in any proceeding before or at the trial of this case. EEOC
24 also agrees to provide all W-2 and/or paycheck stubs regarding mitigation of the
25 backpay claim of any of the listed women.

26 The stipulation does not affect or limit any argument or claim that EEOC
27 may have to seek damages incurred during Section I Claimants' employment for
28 pain and suffering, emotional distress, indignity, loss of enjoyment of life, loss of

1 self-esteem, humiliation, including claims for “garden-variety” emotional distress,
2 in amounts to be determined at trial. *See, e.g., Turner v. Imperial Stores*, 161
3 F.R.D. 89, 97 (S.D. Cal. 1995)(leading case concluding that “garden-variety”
4 claims for emotional distress do not justify compelling psychiatric examinations
5 under Rule 35). For Section I Claimants, EEOC does not intend to present at trial
6 any medical records, expert testimony, or treating physician’s testimony in support
7 of their claims for damages. Further, this stipulation does not waive any privilege
8 against disclosure of the records at issue that Plaintiff may have in seeking “garden
9 variety” damages for the Section I Claimants.

10 **II. Attorneys Eyes Only Review of Four Subpoenas**

11 As for the subpoenas relating to Teresa Sanchez (subpoena to SCOBM),
12 Maria Socorro Zapien (subpoena to Zapien Electric), Maria Magana (subpoena to
13 Varsity Contractors), and Maria Cantoral (subpoena to WM Bolthouse Farms)
14 (“Section II Claimants”), no limitation on claims has been agreed upon. The
15 parties nevertheless agree that Wheels of Justice will produce all documents related
16 to Section II Claimants at the same time only to the attorneys for Plaintiffs and
17 attorneys for Defendants. The parties agree that the documents related to Section
18 II Claimants are to be reviewed by “attorneys eyes only.” If the attorneys for
19 Defendants believe that they should be able to use any of the subpoenaed
20 documents related to Section II Claimants for any other purposes in this litigation,
21 including motion practice and trial, then they need to notify the attorneys of the
22 other parties to begin the meet and confer process no later than two weeks of the
23 receipt of the subpoenaed documents. If an agreement cannot be reached within
24 one month of receiving said documents, then Plaintiffs may seek a protective order
25 against any use beyond review by the attorneys.

26 For any documents related to Section II Claimants that the parties agree will
27 not be used in this case, Defendants will destroy said documents and copies of any
28 such documents, as well as notes and copies of notes regarding said documents.

1 Defendants also agree to not use information obtained from any documents that the
2 parties agree will not be used.

3 **III. Preservation of Objections**

4 The foregoing agreement is solely meant to resolve a discovery dispute
5 amongst the parties. It does not constitute a waiver or withdrawal of any objection
6 to Defendants' use of obtained documents at an eventual trial of this case or
7 potential defenses or claims that that parties can raise, except as specifically listed
8 by the EEOC regarding ongoing emotional distress damages and back and front
9 pay for specified claimants. Nothing in this stipulation should be construed as

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1 having any precedential value as to what the parties would agree to in any other
2 litigation.

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4 **It is so stipulated.**

5 Respectfully submitted,

6 U.S. EQUAL EMPLOYMENT
7 OPPORTUNITY COMMISSION

8 Date:

By:

9 _____
10 Anna Y. Park
11 Elizabeth Esparza-Cervantes
12 Lorena Garcia
13 Attorneys for Plaintiff U.S. EEOC

LAW OFFICES OF MALLISON &
MARTINEZ

14 Date:

By:

15 /s/ Stan Mallison via consent to sign
16 Stan Mallison
17 Hector R. Martinez
18 Attorneys for Plaintiff- Intervenors

LITTLER MENDELSON

19 Date:

By:

20 _____
21 Keith Jacoby
22 Laura Hayward
23 Attorneys for Defendant
24 ABM Industries Incorporated, ABM
25 Janitorial Services, Inc., and ABM
26 Janitorial- Northern California
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ORDER

For good cause shown, the stipulation of the parties related to the current discovery dispute is approved to the extent that it is consistent with the Scheduling Order. All non-dispositive motions must be filed within the timeframes set forth in the Scheduling Order or leave of the Court, based upon a showing of good cause to modify the Scheduling Order, must be obtained before filing any such motion.

IT IS SO ORDERED.

Dated: April 9, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE