

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**IN RE: AME CHURCH EMPLOYEE
RETIREMENT FUND LITIGATION**

MDL Case No. 1:22-md-03035-STA-jay
ALL CASES

**CASE MANAGEMENT ORDER NO. 2
(STIPULATED PROTECTIVE
ORDER)**

Before the Court is the Parties' Stipulated Protective Order. The Parties seek, pursuant to Federal Rule of Civil Procedure 26, entry of a Stipulated Protective Order. Finding good cause, the Court **ADOPTS** the Proposed Protective Order.

IT IS THEREFORE ORDERED that this Protective Order shall apply as follows:

DEFINITIONS

1. As used in this Order, these terms shall have the following meanings:
 - a. The term “**Action**” means the above-captioned action, and any and all cases consolidated or coordinated with it.
 - b. The term “**Confidential Information**” means and includes any non-public information that a Designating Party believes in good faith is entitled to confidential treatment under applicable law, including, but not limited to, confidential or proprietary business, commercial or financial information; a trade secret; confidential research and development, credit, compliance, personnel, or administrative

information; or any other commercial or personal information that is not publicly known.

- c. The term “**Counsel**” (without qualifier) means Outside Counsel and In House Counsel.
- d. The term “**Designating Party**” means a Party or Non-Party that designates information or items produced or disclosed as “CONFIDENTIAL.”
- e. The term “**Discovery Material**” means all items or information, including from any Non-Party, regardless of the medium or manner in which they are generated, stored, or maintained (including, among other things, documents, testimony, interrogatory responses, transcripts, depositions and deposition exhibits, responses to requests to admit, expert reports, recorded or graphic matter, electronically stored information, tangible things, and/or other information), that are produced, given, exchanged by, or obtained from any Party or Non-Party during discovery in this Action.
- f. The term “**Expert**” and/or “**Consultant**” means a person with specialized knowledge or experience in a matter pertinent to this Action, along with his or her employees and support personnel, who has been retained by a party or its counsel to serve as an expert witness or consultant in this Action, and who is not currently an employee of a Party and who, at the time of retention, is not anticipated to become an

employee of a Party. This definition includes professional jury or trial consultants retained in connection with this Action.

- g. The term “**In House Counsel**” means attorneys and other personnel employed by a Party that is an organization to perform or support legal functions, to whom disclosure of Discovery Material is reasonably necessary in connection with this Action.
- h. The term “**Non-Party**” means any natural person or entity that is not a named Party to the Action.
- i. The term “**Objecting Party**” means a Party who objects to another Party’s designation(s) of Protected Material.
- j. The term “**Outside Counsel**” means attorneys who are not employees of a Party to this Action but were retained to represent or advise a Party to this Action, and either appeared in this Action on behalf of that Party, or are employed or were retained by a law firm which has appeared on behalf of that Party, as well as their paralegals, secretaries, and other support staff (including temporary or contract staff).
- k. The term “**Party**” means any party to the Action, including all of its officers, directors, employees, and agents.
- l. The term “**Privileged Material**” means Discovery Material protected from disclosure under the attorney-client privilege, work product doctrine, common interest privilege, or any other privilege, protection, or immunity from discovery.

- m. The term “**Producing Party**” means any Party or Non-Party that produces Discovery Material in this Action.
- n. The term “**Professional Vendors**” means persons or entities who provide litigation support services (e.g. photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving documents or data in any form or medium) and their employees and subcontractors.
- o. The term “**Protected Material**” means any Discovery Material or Confidential Information designated as “CONFIDENTIAL” pursuant to the terms of this Order, provided, however, that “Protected Material” does not include information that is publicly available or that becomes publicly available (except information that became publicly available as a result of a breach of this Order).
- p. The term “**Receiving Party**” means any Party or Non-Party that receives Discovery Material from a Producing Party.

SCOPE

2. The restrictions and obligations set forth within this Order shall apply to all Protected Material; (2) all information copied or extracted from Protected Material; (3) all copies, excerpts, summaries, or compilations of Protected Material, including notes, lists, memoranda, expert reports, indices, or other materials prepared from or based on an examination of Protected Material that quote from or paraphrase Protected Material with such specificity that the Protected Material can

be identified; (4) all other forms of tangible media containing or memorializing Protected Material, including, for example, photographs and audio and video recordings, and (5) all testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, this Order has no effect upon, and shall not apply to, any Producing Party's, Receiving Party's, or any other person's use of its own Confidential Information or Protected Material for any purpose, nor shall it affect any Producing Party's, Receiving Party's, or any other person's subsequent waiver of its own prior designation with respect to its own Confidential Information or Protected Material.

3. The restrictions and obligations set forth in this Order will not apply to any information or material that: (a) by agreement of the Parties, does not reflect Confidential Information; (b) the Parties agree, or the Court rules, is already public knowledge or is not entitled to confidential treatment under applicable law; or (c) the Parties agree, or the Court rules, has become public knowledge other than as a result of disclosure in violation of this Order or in breach of any law or duty of confidentiality.

4. For avoidance of doubt, the restrictions and obligations set forth within this Order shall not be deemed to prohibit discussion with any person of any Protected Material if that person already has or obtains legitimate possession (for example, through a source that obtained the information lawfully and was under no obligation of confidentiality) thereof.

5. The protections conferred by this Order and the limitations on the use

of information obtained during the course of discovery in this matter as set forth in this Order cover not only Discovery Material (as defined above) but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or Counsel in settings that might reveal Protected Material. However, except as set forth in Paragraph 28, this Order shall not be construed to cause any Counsel to produce, return, destroy, and/or sequester their own attorney work product, or the work product of their co-counsel, created in anticipation of or in connection with this Action.

DURATION

6. The confidentiality obligations imposed by the Order shall remain in effect even after the resolution of this Action, until the Designating Party agrees otherwise in writing or this Court orders otherwise.

DESIGNATION OF PROTECTED MATERIALS

7. Information and Material Subject to Designation. Any Party or Non-Party to this Action may designate as “CONFIDENTIAL” any non-public information disclosed or produced in this Action if it believes in good faith that the material constitutes Confidential Information. Each Party or Non-Party that designates information or items as CONFIDENTIAL agrees to take reasonable and proportional efforts under the circumstances to limit any such designation(s) to specific material that qualifies as Confidential Information. Designations that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development

process or to impose undue expenses and burdens on the other Parties) may expose the Designating Party to sanctions. If it comes to a Designating Party's attention that information or items that it designated CONFIDENTIAL do not qualify for this protection, that Designating Party will promptly notify all other Parties that it is withdrawing the mistaken designation.

8. Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Protected Material must be clearly designated as such at the time it is disclosed or produced, subject to the following more specific requirements for designating particular categories of materials:

- a. For hard copy information produced in documentary form (e.g., paper documents, excluding transcripts of depositions or other pretrial or trial proceedings), the Designating Party shall affix the legend "CONFIDENTIAL" to each document that contains Protected Material.
- b. For hard copy documents made available for inspection and copying, the Designating Party need not designate Protected Material until after the Receiving Party has identified the documents it wants copied and produced. After the Receiving Party identifies the documents it wants copied and produced, the Designating Party shall determine which documents qualify for designation and affix the legend "CONFIDENTIAL" to each document that contains Protected Material prior to providing copies of such documents to the Receiving Party.
- c. For information that a Receiving Party obtains from an inspection of a

Designating Party's processes, products, premises, or other property pursuant to Federal Rule of Civil Procedure 34 or stipulation between the Parties, the Designating Party shall advise the Receiving Party in advance, during, or within 15 days of the inspection that such discovery encompasses Confidential Information that should be designated "CONFIDENTIAL" under this Order. All information derived from such inspections, when memorialized in tangible form by any party (for example, notes documents, pleadings, photographs, video recordings, and the like), shall be deemed Protected Material and bear the appropriate legend both on the media (document, photograph, or video) itself and on the exterior of the contain or containers in which the information or item is stored.

- d. For information in non-native documentary form (including transcripts of depositions taken in other proceedings)the Producing Party shall affix the legend "CONFIDENTIAL" on the document and include the applicable designation in the metadata produced for such document.
- e. For electronic information in documentary form (e.g., electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), the Designating Party shall affix a stamp with "CONFIDENTIAL" on the document and on the media on which the electronic data is stored when copies are delivered to a Receiving Party.
- f. For testimony and/or exhibits given in deposition or other pretrial or

trial proceedings, the Designating Party shall designate testimony and/or exhibit as “CONFIDENTIAL” either on the record when the testimony and/or exhibit is given, or on or before the later of (i) thirty (30) calendar days after receipt of the final transcript, or (ii) the date by which any review by the witness and statement of changes to the transcript are to be completed under Federal Rule of Civil Procedure 30(e). Only those portions of the testimony that are designated for protection in accordance with the preceding sentence shall be Protected Material under the provisions of this Order. Any transcript that was not designated on the record shall be treated during the 30-day period as if it had been designated “CONFIDENTIAL” in its entirety. After the expiration of that period or as of such earlier time that such transcript is designated, the transcript shall be treated only as actually designated except as ordered by the Court or as provided in Paragraphs 26-31. Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material. If all or a part of a videotaped deposition is designated as “CONFIDENTIAL” the video media, plus any container, shall be so labeled. The Designating Party shall inform the court reporter of these requirements.

- g. For information produced in audio or video format, the Producing Party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored, or on an

appropriate transmittal cover letter that includes the Bates numbers accompanying the information, the legend “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s). When a Receiving Party to whom electronically stored discovery material so designated is produced reduces such information to hard copy form, to the extent such pages have not previously been marked by the Producing Party, such Receiving Party shall mark the hard copy by affixing the designation “CONFIDENTIAL” to each page of such document.

- h. For documents produced in native format, the Producing Party shall include the confidentiality designation “CONFIDENTIAL” in the metadata produced for such documents and on a placeholder page bearing the document’s Bates number.
- i. For interrogatory answers and responses to requests to admit, and the information contained therein, that the Producing Party affix the legend “Confidential” in a prominent place on each page of such document prior to production.
- j. For reports created by an expert or consultant relying on or incorporating Protected Material in whole or in part, that the Party responsible for its creation include the confidentiality designation “CONFIDENTIAL” on the title page of the report, and any specific pages

reflecting Protected Material.

9. Effect of Inadvertent Failure to Designate. An inadvertent failure to designate qualified information or items does not waive any party's right to secure protection under this Order for such material.

10. Process for Providing Notice of Inadvertent Failure to Designate. In the event that Confidential Information is inadvertently produced or disclosed without any confidentiality designation, after learning of the inadvertent production or disclosure, the Designating Party shall promptly give written notice of such inadvertent production or disclosure (the "Inadvertent Production Notice") to all Receiving Parties and identify (by production number) the affected material and its new designation and shall reproduce copies that contain the appropriate confidentiality designation. Thereafter, the material so designated shall be treated as Protected Material in conformity with the new designation. To the extent such information may have been disclosed to anyone not authorized to receive Confidential Discovery Material under the terms of this Order, the Receiving Party shall make reasonable efforts to retrieve the Discovery Material promptly and to avoid any further disclosure. If corrected, an inadvertent failure to designate qualified information or items as "CONFIDENTIAL" does not waive the Producing Party's right to secure protection under this Order for such material. If material is redesignated "CONFIDENTIAL" after the material was initially produced, each Receiving Party, upon notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

11. Designation of Information or Items Produced by Others. A Designating Party may designate as Confidential Information any Discovery Material produced by another Party or Non-Party, provided that said Discovery Material contains the Designating Party's own Confidential Information, or otherwise is entitled to protective treatment under Federal Rule of Civil Procedure 26(c) or other law, such that the designation is appropriate under the terms of this Order. Such Designation shall be accomplished by providing written notice to all Parties identifying (by Bates number or other individually identifiable information) the Discovery Material to be designated within fourteen days of learning that the material contains Confidential Information. Failure to designate within thirty days, alone, will not prevent a Party from obtaining the agreement of all Parties to designate Discovery Material as Confidential or from moving the Court for such relief. Any Party may object to the designation of Discovery Material pursuant to the procedures set forth in Paragraphs 12-15 regarding objecting to designations.

OBJECTIONS TO CONFIDENTIALITY DESIGNATIONS

12. Timing of Confidentiality Objections. Any Party may object to any other Party's confidentiality designations at any stage of this litigation.

13. Notice and Meet-and-Confer Requirements. In order to challenge a Designating Party's confidentiality designations, an Objecting Party must, as a first step, provide written notice of each designation that it wishes to challenge and describe the basis for each challenge. For avoidance of ambiguity, the Objecting Party must state that the written notice is being provided in accordance with this Section

of the Protective Order. The Parties shall attempt in good faith to resolve the Objecting Party's challenges by meeting and conferring via telephone, video conference, or in-person meeting within ten business days of the Producing Party's receipt of the written notice, unless a different timeline is agreed. In conferring, the Objecting Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the designation. An Objecting Party may proceed to the next stage of the objection process only if it has engaged in this meet-and-confer process or it establishes that the Designating Party is unwilling to participate in the meet-and-confer process in a timely manner, consistent with Local Rule 7.2(a)(1).

14. Judicial Resolution of Confidentiality Objections. If the Parties are unable to resolve the Objecting Party's challenges during the meet-and-confer process, the Objecting Party may seek judicial intervention by filing a motion with the Court. The Designating Party shall be entitled to file a response to the Objecting Party's motion in accordance with Local Rule 7.2(a)(2) unless the Court orders otherwise. Until the Court rules on the dispute, all Parties shall continue to afford the material in question the level of protection to which it would be entitled under the Designating Party's designation. In the event that the final ruling is that the challenged material's designation should be changed, the Designating Party shall reproduce copies of all materials with their designations removed or changed in

accordance with the ruling within ten business days of the ruling (unless the Court orders otherwise).

15. Treatment of Protected Materials Subject to Confidentiality Objections.

Until the Parties have resolved their dispute or the Court has ruled on the Objecting Party's challenge(s), any materials subject to a confidentiality challenge under this Section much be treated as they were designated by the Designating Party.

ACCESS TO AND USE OF PROTECTED MATERIALS

16. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this litigation and associated appeals. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Except as required by law, Discovery Material may not be used for any other purpose, including, without limitation, any business or commercial purpose. Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Following the termination of this Action, each Receiving Party must comply with the provisions of Paragraphs 39-40 below. The recipient of any Protected Material shall maintain such material in a secure and safe area and shall exercise a standard of due and proper care with respect to the storage, custody, use, and/or dissemination sufficient to safeguard against unauthorized or inadvertent disclosure of such material. Protected Material shall not be copied, reproduced, extracted, or abstracted, except to the extent that such copying, reproduction, extraction, or abstraction is

reasonably necessary for the conduct of this Action. All such copies, reproductions, extractions, and abstractions shall be subject to the terms of this Order and labeled in the same manner as the designated material on which they are based.

17. Disclosure of Protected Materials Designated “CONFIDENTIAL.”

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

- a. The Receiving Party’s Counsel to whom it is reasonably necessary to disclose the information in connection with this Action;
- b. In addition to In House Counsel, the officers, directors, members, partners, shareholders, and employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation, if any;
- c. Named plaintiffs to whom disclosure is reasonably necessary for this litigation;
- d. Experts and/or Consultants and their respective staff or vendors to whom disclosure is reasonably necessary for this litigation;
- e. The Court and its personnel, subject to the requirements of Paragraphs 35-36 below;
- f. Court reporters and/or videographers and their staff;
- g. Professional jury or trial consultants (including mock jurors) and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

- h. Witnesses who have been subpoenaed or noticed for deposition, trial testimony, or other court proceeding in the Action not otherwise authorized to view the Protected Material in question, during that witness' testimony at a deposition, hearing, or trial in the Action, or in preparation for the same, provided that (i) the disclosure is made for the purpose of advancing the disclosing Party's claims or defenses, and for no other purposes; (ii) the witness is not permitted to retain the Protected Material after the witness is examined regarding the Protected Material; the witness is provided with a copy of this Protective Order and executes the Acknowledgment of Protective Order attached as Exhibit A within five (5) business days after testifying. ;
- i. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
- j. Any mediator and/or special master and/or other third parties who are assigned to this matter by the Court or retained by the Parties for settlement purposes or resolution of discovery or other disputes, and his or her staff;
- k. Any other person agreed to by the Designating Party in writing; and
- l. Any other person to whom the Court compels disclosures of the Confidential Information or to whom disclosure is required by law.

Any disclosures permitted by this section may be only made to the extent

reasonably necessary to prosecute or defend this Action. Before any Confidential Information is disclosed to the persons identified above in Paragraph 17(d), (g), or (k) such persons shall be provided with a copy of this Protective Order and shall execute the Acknowledgment of Protective Order attached as Exhibit A.

18. Use of Designated Material at Trial. Counsel for the Parties agree to meet and confer concerning the use of any Protected Material at the trial of this Action during preparation of the Joint Pretrial Order to be submitted in accordance with the Court's Individual Rules and Practices and Federal Rule of Civil Procedure 26(a)(3). As part of that meet and confer process, the Parties agree to establish a process for maintaining the status of Protected Material that will allow Protected Material to be used at trial without causing such Protected Material to lose its status as Protected Material.

19. Retention of Protected Material. Unless otherwise agreed to by the Producing Party in writing or ordered by the Court, persons described in Paragraphs 17 (h), (i), and (k), who have been shown Confidential Information shall not retain copies thereof longer than reasonably necessary in light of the purpose for which the Confidential Information was disclosed.

**PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

20. If a Party is served with a discovery request, subpoena, or an order issued in other litigation, or receives some other form of legal process or request from any court, federal or state regulatory or administrative body or agency, legislative body, self-regulatory organization, or other person or entity purporting to have

authority to require the production thereof, that compels disclosure of any Protected Materials, that Party must (1) promptly notify the Designating Party, to the extent permitted by law and the rules, requirements, or requests of any relevant governmental or self-regulatory organization, within seven (7) business days unless production is required earlier, in which case the notice must be made in time for the Designating Party to take steps as set forth below in writing (by electronic mail, if possible); such written notice must include a copy of the subpoena or court order and the date set for the production of the subpoenaed information; (2) promptly notify in writing the party who caused the discovery request, subpoena, order, or other form of legal process or request to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order; such written notice must object to the production of Protected Material on the grounds that it is subject to the protections provided by this Order, and include a copy of this Order; and (3) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

21. To the extent consistent with the rules, requirements, or requests of any relevant governmental or self-regulatory organization, the Receiving Party shall not produce the requested Protected Material unless and until a court of competent jurisdiction so directs, except if the Designating Party (a) consents, or (b) fails to file a motion to quash or fails to notify the Receiving Party in writing of its intention to contest the production of the Protected Material prior to the date designated for production of the Protected Material, in which event the Receiving Party may produce

on the production date, but no earlier. In connection with any production of Confidential Information subject to this Order, the Receiving Party shall request confidential treatment for the Confidential Information. The purpose of imposing these duties is, to the extent consistent with the rules, requirements, or requests of any relevant governmental or self-regulatory organization, or otherwise permitted by law, to alert the interested parties to the existence of this Order and to afford the Designating Party an opportunity to try to protect its confidentiality interest in the matter or proceeding in connection with which the discovery request, subpoena, or order is issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that matter or proceeding of its Protected Material.

22. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any Protected Materials before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its Protected Materials, and nothing in these provisions should be construed as authorizing or encouraging any party in this Action to disobey a lawful directive from another court.

23. Nothing in these provisions should be construed as authorizing, requiring, or encouraging a Receiving Party to disobey, or to risk contempt of, a lawful directive from another court. If Discovery Material is produced to a Non-Party as a result of a discovery request, subpoena, or an order issued in other litigation, or some other form of legal process from any court, federal or state regulatory or

administrative body or agency, legislative body, or other person or entity, such Discovery Material shall continue to be treated in this Action in accordance with any designation as Protected Material.

MATERIALS SOUGHT FROM NON-PARTIES

24. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected and shall be governed by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

25. Any Party, in conducting discovery from Non-Parties in connection with this Action, shall provide any Non-Party from which it seeks discovery with a copy of this Order so as to inform each such Non-Party of his, her, or its rights herein. If a Non-Party provides Discovery Material to any Party in connection with this Action, the provisions of this Order shall apply to such Discovery Material as if such Discovery Material were being provided by a Party. Under such circumstances, the Non-Party shall have the same rights and obligations under the Order as held by the Parties to this Action. Any Non-Party producing Discovery Material or giving deposition testimony in this Action may avail herself, himself, or itself of the provisions of this Order available to Parties for her, his, or its testimony and Discovery Material by informing the Party that served the subpoena of the same.

**INADVERTENT PRODUCTION OF MATERIALS THAT ARE
PRIVILEGED OR OTHERWISE PROTECTED FROM DISCLOSURE**

26. The production of documents, electronically stored information, or other materials or information, whether inadvertent or otherwise, containing any matter protected from disclosure by the attorney-client privilege or work-product doctrine in connection with the Action is not a waiver of the attorney-client privilege or work-product doctrine in the Action or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

27. Consistent with Federal Rule of Civil Procedure 26(b)(5)(B), if any Discovery Material is inadvertently produced by any Producing Party and is subject to a claim of privilege or of protection from production (as an attorney-client communication, attorney work product, trial preparation materials, or any other claim of privilege, protection or immunity), the Producing Party making the claim must notify the Receiving Party of the claim in writing within ten (10) business days of discovery. The written notice shall identify the Discovery Material that was produced (including the format of the production, e.g., paper, electronically stored information, etc.), the nature and basis of the claim of privilege or of protection from production, and the date(s) the Discovery Material was produced. If the Producing Party claims that only a portion of the Discovery Material is privileged or protected from production, the Producing Party shall also provide a new copy of the Discovery Material with the allegedly privileged or protected portions redacted. Further, if the Receiving Party reasonably believes that the Producing Party has inadvertently produced Discovery Material that is subject to a claim of privilege or of protection

from production, upon such discovery, the Receiving Party shall promptly notify the Producing Party and identify the Discovery Material that it believes was inadvertently produced. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Disclosing Party that such materials have been produced.

28. Upon notice that a Producing Party wishes to claw back Discovery Material protected as Privileged Material that was produced inadvertently, the Receiving Party shall promptly (1) undertake commercially reasonable efforts to return to the Producing Party or destroy all summaries or copies of such Privileged Material and any materials incorporating information from the Privileged Material (notwithstanding the final sentence of Paragraph 5 regarding a Receiving Party's own work product that reflects the Protected Material referred to in this Section), (2) provide notice in writing that the Receiving Party has undertaken reasonable efforts to return and destroy such Privileged Material, and (3) not use such items for any purpose until further order of the Court or agreement of the Parties. In all events, such return, destruction, and certification must occur within ten (10) business days of receipt of the request, unless the Receiving Party provides notice of its intent to challenge the assertion of a claim of protection under Federal Rule of Civil Procedure 26(b)(5) (the "Challenge Notice"), in which event the Receiving Party may retain no more copies (the "Retained Copies") of the disclosed material than are sufficient to prosecute its challenge to the assertion of protection. Having provided a Challenge

Notice, the Receiving Party must raise a challenge with the Court within twenty-one (21) days of that Challenge Notice, or otherwise return or destroy the Retained Copies within that period. Moreover, in the event a Challenge Notice is provided, the Receiving Party shall make no use of the Discovery Material subject to the request for return other than in connection with the Receiving Party's prosecution of its challenge to the assertion of privilege, until the Challenge is resolved. However, the Receiving Party may request an extension of the deadline for the return or destruction of Retained Copies, and such extension shall not be unreasonably withheld. For the avoidance of doubt, nothing in this paragraph shall be construed as restricting the right of any Party to challenge a claim of privilege at any time permissible under the Federal Rules of Civil Procedure and other relevant laws after return or destruction of the Retained Copies and the Receiving Party's retention of Retained Copies shall not be construed in this or any other action as a waiver by the Producing Party. If the Producing Party has already produced a privilege log with respect to its production of documents, within ten (10) business days of the notification that reasonable efforts have been taken to return or destroy the Privileged Material, the Producing Party shall supplement that privilege log with respect to the Privileged Material, otherwise the Producing Party shall include the Privileged Material on its privilege log when that log is initially produced. The return of any Discovery Material to the Producing Party shall not in any way preclude the Receiving Party from moving the Court for a ruling that the disclosed information is not privileged or that such privilege has been waived; however, the Receiving Party

may not assert as a basis for waiver or the relief it seeks the fact or circumstance that such privileged documents have already been produced. Alleged Privileged Material shall remain protected against disclosure and use during the pendency of any dispute over their status.

29. If, during a deposition, a Party claims that a document being used in the deposition (e.g., marked as an exhibit, shown to the witness, or made the subject of examination) contains Privileged Material, it may at its sole election (a) allow the document to be used in the deposition without waiver of its claim of privilege or other protection or (b) instruct the witness not to answer questions concerning the document pending a prompt resolution of any disagreement concerning the document's privileged or work-product protected status. If the Party allows the examination concerning the document to proceed on a non-waiver basis, the Parties shall sequester all copies of the purportedly privileged or work-product protected document. Immediately following the deposition, the Parties will commence the procedure outlined in the preceding paragraphs to address the claim of privilege or other protection, including the notice requirement set forth in Paragraph 27. Until the dispute is resolved, all Parties and any other persons who have access to the transcript of such deposition shall treat that transcript as Confidential Information. If any Party instructs the witness not to answer questions concerning the document, and any Party wishes to have the issue resolved by the Court, the Parties will then cooperate in promptly submitting the issue of the document's status to the Court. If the document is ultimately determined not to be privileged or subject to other

protection, the Party or entity asserting the claim of privilege will be responsible for ensuring that the deposing Party is given an opportunity to depose the witness about the document.

30. Pursuant to Federal Rule of Evidence 502(d), if a Party at any time notifies any other Party that it, for any reason, disclosed documents, testimony, information, and/or things that are protected as Privileged Material, or the Receiving Party discovers such disclosure (in which case the Receiving Party shall give the Producing Party prompt notice), the fact of the disclosure and the circumstances surrounding the disclosure and the discovery of the disclosure shall not be deemed a waiver or evidence in support of a waiver— in the Action or in any other proceeding, including in federal or state proceedings – of any applicable privilege or protection.

31. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must as soon as practicable, but in any event, not longer than five (5) business days after discovery of the disclosure by Counsel, (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order.

NOTICES

32. All notices required by this Order must be provided in writing to Counsel for each Party and, if applicable, in writing to a Non-Party, with email communication

being sufficient. Any of the notice requirements herein may be waived in whole or in part, but only in writing by an attorney for the Designating Party.

MISCELLANEOUS

33. **Right to Further Relief.** Nothing herein shall preclude any Party from seeking to amend this Order in writing for good cause shown. Nor shall anything herein preclude any Party or Non-Party from seeking additional or different protections on a case-by-case basis under the standards set forth in Federal Rule of Civil Procedure 26(c). The deadlines set forth in this Order may be modified in particular circumstances by agreement of the Parties without the involvement of the Court.

34. **Right to Assert Other Objections.** By stipulating to entry of this Order, no Producing Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order, including confidentiality. Similarly, no party waives any right to object on any ground to use in evidence of any of the material covered by this Order. Similarly, no Producing Party waives any right to object on any ground to the admissibility or use in evidence of any of the material covered by this Order.

35. **Filing Protected Material.**

- a. If a Party intends to file Protected Material, that Party should meet and confer with the Designating Party to determine whether the Protected Material should be filed under seal or if less restrictive alternatives are available (e.g. if the “CONFIDENTIAL” designation may be withdrawn

or if a portion of the Protected Material could be redacted to allow the document to otherwise be publicly filed).

- b. A motion to file under seal should set forth a specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of: (i) the legitimate private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive alternative to sealing is not sufficient. Reference to the fact that material was designated as Protected Material under the terms of this Order is not a sufficient basis for sealing.
- c. If a Designating Party seeks to file its own Protected Material under seal, it shall provisionally file the Protected Material under seal and file its motion to seal within seven days of filing the Protected Material, after consultation with the parties pursuant to Local Rule 7.2(a)(1)(B). The material shall remain under seal while the motion to seal is pending.
- d. If the Party filing the Protected Material is not the Designating Party, the filing party shall provisionally file the Protected Material under seal and contemporaneously file a motion to consider whether another party's material should be sealed, after consultation with the parties pursuant to Local Rule 7.2(a)(1)(B). That motion should (i) identify each document or portions thereof for which sealing is sought; and (ii) identify

which Party (or Non-Party) designated each aspect of the Protected Material that is sought to be sealed. The Designating Party shall then have seven days to file a statement supporting the sealing of the Protected Material that complies with the requirements of Paragraph 35(b). If the Designating Party is a Non-Party, the filing party must serve a copy of the motion on the Designating Party on the same date as the motion is filed. Filing a motion to consider whether another party's material should be sealed shall not prejudice any Party's right to argue to the Court that such document is not Confidential Information and need not be preserved under seal.

- e. If any Party or Non-Party wishes to file a response to a motion to file under seal or a motion to consider whether another party's material should be sealed, such response should be filed within seven days. Responses should not exceed 20 pages absent leave of Court. Replies are not permitted.

36. Disclosure of Protected Material During Public Proceedings. Without written permission from the Designating Party or a Court order secured after appropriate notice to all interested persons, a Party may not disclose Protected Material at any public proceeding in this Action. Absent Court order, Protected Material may be disclosed only in camera or in sealed proceedings.

37. Attorney Rendering Advice. Nothing in this Order will bar or otherwise restrict an attorney from rendering advice to his or her client or from relying upon or

generally referring to Protected Material in rendering such advice, provided, however, that in rendering such advice or in otherwise communicating with his or her client, the attorney shall not reveal or disclose the specific content of Protected Material if such disclosure is not otherwise permitted under this Order.

38. Additional Relief from the Court. Nothing contained in this Order shall prevent any Party or Non-Party from seeking additional relief from the Court, including, but not limited to, amendments broadening or restricting the rights of access to and the use of Protected Material or contesting the designation of a confidential document. Nothing in this Protective Order shall be deemed to be a decision by the Court as to how documents and other material will be handled at the trial of this matter.

FINAL DISPOSITION

39. Within ninety (90) days after the final resolution of the Action, including resolution of any appellate proceedings, all documents and copies of all documents (other than exhibits of record) that contain Protected Material shall be either returned to the party or non-party who produced or supplied the Protected Material, destroyed, or otherwise sequestered. Upon request of the party who produced or supplied the Protected Material, all counsel of record who received such documents shall certify compliance herewith. Notwithstanding the above, counsel of record may retain for their files copies of any of their own work product, correspondence, legal memoranda, pleadings, briefs and exhibits, any other court filings, deposition transcripts and exhibits, or hearing or other official transcripts and exhibits, which

contain Protected Material. Such retained copies will remain subject to the restrictions herein..

40. This Order shall survive the termination of this Action, and this Court shall have continuing jurisdiction for enforcement of its provisions following termination of this Action. No part of the restrictions imposed by this Order may be waived or terminated, except by written stipulation executed by Counsel for each Designating Party or by an Order of the Court for good cause shown.

IT IS SO ORDERED, this 28th day of October, 2022

s/ S. Thomas Anderson
S. Thomas Anderson
Chief United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**IN RE: AME CHURCH EMPLOYEE
RETIREMENT FUND LITIGATION**

MDL Case No. 1:22-md-03035-STA-jay
ALL CASES

**EXHIBIT A
ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

I, _____, declare that:

1. My address is _____

2. My current employer is _____

3. My current title is _____

4. I have received a copy of the Stipulated Protective Order in the above-captioned action (the "Action"). I have read and understand the provisions of the Stipulated Protective Order.

5. I will comply with all of the provisions of the Stipulated Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Stipulated Protective Order, and will use only for purposes of this Action any information or materials designated as "CONFIDENTIAL" that I receive in this Action, except as otherwise permitted under the terms of the Stipulated Protective Order.

Dated: _____

Signed: _____