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. 3**

JOINT STIPULATED PROTOCOL FOR THE DISCOVERY
OF ELECTRONICALLY STORED INFORMATION
AND HARD-COPY DOCUMENTS

The parties to the above-captioned litigation (the "Action" or this "Litigation"), through their counsel, have stipulated and agreed to give effect to this Joint Stipulated Protocol for Discovery of Electronically Stored Information and Hard-Copy Documents ("ESI Protocol" or "Protocol"), to facilitate discovery in this Litigation.

The parties shall make good-faith efforts to comply with and resolve any differences concerning compliance with this ESI Protocol. If a Producing Party, notwithstanding its good-faith efforts, is unable to reasonably comply with any material aspect of this ESI Protocol, such party shall inform the Receiving Party in writing as to why compliance with the ESI Protocol is unreasonable. Such writing shall be sent within a reasonable time of the discovery of the non-compliance. The parties agree to meet and confer within a reasonable time regarding the Producing Party's non-compliance with this Protocol to determine if the non-compliance can be corrected. All productions in this Litigation are subject to the Protective Order separately entered by the Court in this Litigation. Nothing herein is intended to alter

the parties' rights and obligations under the Federal Rules of Civil Procedure and applicable law. The parties specifically reserve all of their rights and objections to any discovery that may be served upon them in this Litigation.

I.   PURPOSE

The Protocol, including Exhibit 1 hereto, will govern discovery of ESI and hard-copy documents in this Litigation as a supplement to the Federal Rules of Civil Procedure, the Local Rules of this Court, and any other applicable orders and rules. The Protocol shall also govern productions made by any third party who is subpoenaed in this Action unless otherwise agreed to by the issuing party and the third party; accordingly, the Protocol shall be attached to any subpoena issued in this Action.

II.   DEFINITIONS

1.   "Document(s)" shall refer to ESI, as defined herein, and where specifically referenced, hard-copy documents, as defined herein.

2.   "Document Family" refers to a group of related ESI that includes parent and child documents as maintained in the ordinary course of business (e.g., a parent email and any attachments thereto).

3.   "Electronically stored information" or "ESI," as used herein, means, as referenced in the Federal Rules of Civil Procedure, information that is stored electronically, regardless of the media or whether it is in the original format in which it was created, as opposed to stored in hard copy (i.e., on paper).

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4.   "Extracted Text" means the text extracted from an electronic document, and includes all header, footer and document body information when reasonably available.

5.   "Hard-Copy Document" means a document collected from physical files (paper) and not from electronic sources.

6.   "Media" means an object or device, real or virtual, including but not limited to a disc, tape, computer or other device on which data is or was stored.

7.   "Metadata" is used to describe the structural information about ESI that is created by the file system or application and embedded in the document. The Metadata fields to be produced (to the extent it is practical) are listed in Exhibit 1.

8.   "Native" or "Native Format" means and refers to the format of ESI in the application in which it was originally created and/or as used by the Producing Party in the usual course of its business and in its regularly-conducted activities.

9.   "OCR text" means text generated through Optical Character Recognition technology as applied to an image/bitmap picture representation of a document.

10.   "Producing Party" means or refers to any party in the Litigation from which production of ESI or hard-copy documents are being sought or by which production of ESI or hard-copy documents are being made.

11.   "Receiving Party" means or refers to any party in the Litigation seeking and/or receiving production of ESI or hard-copy documents.

12.   "Tagged Image File Format" or "TIFF" refers to the CCITT Group IV graphic file format for storing bitmap images of ESI or hard-copy documents.

13.   "Personal Private Information" refers to an individual's social security number, banking account numbers, sensitive health information, and other personal financial information.

III.   SCOPE

This Protocol supplements the Federal Rules of Civil Procedure, the Court's Local Rules, and any other applicable orders or rules. Nothing in this Protocol is intended to alter, expand, or affect any party's rights or obligations under any order by the Court or the Federal Rules of Civil Procedure, but shall be construed, wherever possible, as consistent with the Court's orders and the Federal Rules. In addition, nothing in this Protocol establishes any agreement as to either the temporal or subject-matter scope of discovery in this case, or whether a party has made a reasonable and diligent search for ESI or Hard-Copy Documents. The Protocol does not govern the procedures or criteria used to define or limit the scope of production, such as the identification or preservation of potentially responsive data types and systems, custodians, and search parameters, to which the parties agree to separately meet and confer in an effort to agree on procedures and/or criteria used to define or limit the scope of production. Nothing herein shall restrict a party's rights to seek judicial intervention if the parties are unable to reach agreement on these issues.

IV.   COOPERATION

The parties are aware of the importance of cooperation in the discovery process. To that end, the parties commit to cooperate in good faith throughout this Litigation

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consistent with the Local Rules and any additional applicable rules or orders of the Court and agree to confer in good faith with respect to any disputes arising under this Protocol before raising the issue to the Court.

V.   E-DISCOVERY LIAISONS

Each party will identify one or two E-discovery Liaisons who will be primarily responsible for meeting and conferring concerning ESI. Each E-discovery Liaison will: (1) be knowledgeable about the party's e-discovery efforts; (2) be, or have reasonable access to those who are familiar with the party's electronic systems and capabilities in order to explain those systems and answer relevant questions; and (3) be, or have reasonable access to those who are, knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues, and relevant information retrieval technology, including search methodology. Each party shall designate its ESI Liaison(s) within 10 days after entry of this Protocol. Such designation shall be by email to all other parties. Each party will provide written notice to the other parties of any changes of its designated E-discovery Liaison.

VI.   PRESERVATION

The parties agree that the preservation of potentially relevant ESI and Hard-Copy Documents will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure that discoverable information is preserved, the parties agree that:

1.   Plaintiffs and Defendants are responsible for taking reasonable and proportionate steps to preserve potentially relevant Documents currently in their respective possession, custody, or control.

2.   Any sources of data that are not reasonably accessible because of undue burden or cost pursuant to Federal Rule of Civil Procedure 26(b)(2)(B), need not be preserved, collected, processed, reviewed, and/or produced. The parties will confer as necessary regarding these sources.

VII.   IDENTIFICATION AND COLLECTION OF DOCUMENTS

The parties agree that they will meet and confer about methods to identify ESI that is subject to production in discovery and filter out ESI that is not subject to preservation or discovery. The parties will cooperate in good faith regarding the negotiation and use of keyword search terms and/or review technology before using these methods to cull ESI. The Parties shall also disclose any other filtering or culling applied to any document collection unless such filtering or culling is expressly authorized by the terms of this protocol. (For example, the parties need not expressly disclose that they have de-duplicated their document collections consistent with Section IX.). Examples of other culling methods include limiting searches to particular custodians' files and limiting searches by date range.

To the extent a Producing Party elects to use search terms to cull ESI, the Producing Party shall notify the Receiving Party in advance and shall provide a hit count report in MS Excel (or other format as agreed to by both parties). To the extent reasonably possible without undue burden or expense, a hit count report must include the following information, to the extent it can be reasonably obtained/generated: (a)

overall number of documents being searched, and (b) number of documents hit by the search term with separate hits for individual documents hit vs. documents hit including families.

A Producing Party may elect to use technology assisted review or similar advanced analytics (including, but not limited to, TAR or TAR 2.0) to cull or otherwise limit the volume of information to be reviewed for responsiveness and/or to prioritize review of documents collected. If the Producing Party chooses to use such technology to cull or otherwise limit the volume of information to be reviewed for responsiveness, the Producing Party shall disclose that fact to the Receiving Party prior to using such technology, and shall also propose a protocol specific to the particular technology establishing appropriate parameters for the review. Should the Receiving Party object to the proposed parameters, the Receiving Party shall state the basis for its objection(s) and the Parties shall negotiate in good faith and attempt to resolve the dispute before the Producing Party uses the technology.

Unless otherwise agreed to, the Producing Party shall comply with Federal Rule of Procedure 34(b)(2)(E) with respect to the production of Documents and ESI.

VIII.   FORM OF ESI PRODUCTIONS

All provisions in this section shall be complied with to the extent it is reasonably possible to do so and to the extent compliance will not result in undue burden or expense. A Producing Party and a Receiving Party may agree to modify any or all of these provisions with respect to a specific production of documents or ESI.

a)   **Images.** All responsive ESI and Hard-Copy Documents, except ESI that is produced in native format pursuant to subparagraph c of this Section,

shall, to the extent feasible, be produced as single-page, Group IV TIFF files with 300 DPI quality or better and on 8 ½ x 11-inch page size. Documents shall be produced in black and white where the original document is black and white and in color where the original document is in color. Each TIFF file should be assigned a unique name matching the Bates number of the corresponding image. Bates numbers and confidentiality designations should be electronically branded on each produced TIFF image. These TIFF images should be provided in a separate folder and the number of TIFF files per folder should be limited to 1,000 files. All TIFF images shall be processed to show and reveal track changes, comments, and hidden content in Word documents and speaker notes and hidden content in PowerPoint files.

b)   In scanning Hard-Copy Documents, distinct Documents should not be merged into a single record, and single documents should not be split into multiple records (i.e., reasonable efforts should be taken to logically unitize paper documents, with the understanding that document relationships are not always clear). If documents were scanned previous to this case, however, and are not logically unitized, they may be produced in the format in which they were maintained. In the case of an organized compilation of separate documents (for example, a binder containing several separate documents behind numbered tabs), the document behind each tab should be scanned separately. The parties will make reasonable efforts to unitize the documents correctly and to correct any unitization failures.

c)   **Native Format.**   Responsive spreadsheets, audio/visual/multimedia, and other files that are not conducive to production in image

format shall be produced in native format, except where such files are redacted. The
parties agree to meet and confer regarding producing other files in native format, if
necessary and appropriate. Each file produced in native format shall conform to the
following specifications:

    i. A unique document number and confidentiality designation shall be used as the file name, and the original file name and file extension shall be preserved in the corresponding load file. An example of this convention would be: "FDMDL00000001_Confidential.docx."

    ii. The Native Format files shall be accompanied by reference information that sets forth for each Document sufficient information to allow the parties to track and authenticate the Native files produced, including (i) the name of the custodian(s) from whose files the document is produced; (ii) the original file name of the Document; and (iii) a document control number.

    iii. Documents produced in Native Format need not be imaged. Instead, a single-page placeholder image shall be provided for each Native file that indicates the document was produced in Native Format, and that also contains the Bates number of the corresponding file.

d) **Non-English Documents**. To the extent that Documents are produced that contain languages other than English, in whole or in part, the Producing Party shall produce each such Document in the original language or languages in which it was written and collected. The Producing Party has no obligation to create a translation of any Document or any portion thereof, but a Producing Party must produce any identified English translation of non-English documents of which it is actually aware other than translations made at the request of counsel.

e) **Load File Formats**. Productions shall include reasonably available Metadata for all ESI and Hard-Copy Documents (see Exhibit 1) via a document-level-database load file in one of two delimited formats: standard Concordance (DAT) or comma delimited (CSV). Productions shall also include image load files in one of three formats: standard IPro (LFP), Opticon (OPT), or Summation (DII). The total number of imaged Documents referenced in the image load file shall match the total number of images in the production delivery.

f) **Metadata to be Produced**. The Metadata fields detailed in Exhibit 1 will be produced for each Document to the extent that such information is reasonably available and extractable, except that if a field contains privileged information or information otherwise protected from disclosure under order of Court, that information may be redacted and privileged information may be noted in a corresponding privilege log.

g)   **Extracted Text and OCR.** Each document produced in TIFF format, whether originally existing in electronic or in hard copy, shall be produced with extracted text or OCR that captures, to the extent feasible, comments, track changes, hidden content, speaker notes, and other similar information. To the extent this information cannot feasibly be captured, the Producing Party will notify the Receiving Party in writing.

IX.   De-duplication.

To reduce the unnecessary cost of reviewing and producing exact duplicate Documents, the parties shall, to the extent feasible, de-duplicate globally (i.e., across all custodians), provided that all other custodians of the duplicate ESI are listed in the AllCustodians Metadata field. Global de-duplication (de-duplication both within a custodian's documents and across all custodians' documents) is to be executed at the document family level.   De-duplication shall be done on exact duplicate documents using family level hash values derived from industry standard hashing algorithms, such as MD5 or SHA-1 algorithms (or a reasonably equivalent alternative).

1.   No party shall remove near-duplicate documents.

2.   Standalone documents shall not be de-duplicated against email attachments.

3.   For exact duplicate documents, the Producing Party will produce the metadata described in Exhibit 1 for the single production copy to the extent available. If more than one custodian possesses a duplicate, the Producing Party shall populate

a field of data that identifies each custodian who had a copy of the produced document (the "All Custodians" field).

4.   In the event of a rolling production of documents or ESI items, to the extent the Producing Party de-duplicates across custodians the Producing Party shall provide overlay load files with reasonable frequency containing updated AllCustodians Metadata

5.   Any document containing handwritten notes, highlighting, alterations, or markings would not be considered a duplicate of another version and if responsive must be produced as an original document.

6.   If during the course of its review, a Producing Party identifies a large number of duplicate documents the parties may confer regarding a custom deduplication protocol.

X.   Email Threading.

Email thread suppression may be applied in production so long as portions of the thread containing unique content are not suppressed. This unique content includes thread members with BCC metadata, attachments, or edits to body of the text. If email thread suppression is used, the Producing Party must produce the most inclusive email thread that contains all of the prior or lesser-included emails and attachments, including each branch of the email thread. If the most inclusive email thread does not show any differences to the thread such as changes in recipients (e.g., side threads, subject line changes), dates, selective deletion of previous thread content by sender, etc., then the emails containing such changes shall be individually produced.

XI.   Embedded Files.

Except for de minimis images embedded in ESI which, to the extent reasonably feasible should either not be extracted or should be suppressed from production (e.g., logo images), embedded files are to be extracted and produced as family groups. Embedded files should be assigned Bates numbers that directly follow the Bates numbers on the documents within which they are embedded.

XII.   Databases, Structured, Aggregated or Application Data.

This Protocol shall not apply to data contained in a database or other structured or aggregated data source, including, but not limited to, Enterprise Resource Planning databases, and Microsoft Access and Excel-based databases.

XIII.   De-NISTing

Non-user generated files may be removed from review and production using the list of non-user generated files maintained by the National Institute of Standards and Technology (NIST). Additional culling of system files based on file extension may include: WINNT, LOGS, DRVS, C++ Program File (c), C++ Builder 6 (Cpp), Channel Definition Format (cdf), Creatures Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading Style Sheet (css), JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard File (rwz), Scrap Object, System File (dll), temporary files (tmp), Windows Error Dump (dmp), Windows Media Player Skin Package (wmz), Windows NT/2000 Event View Log file (evt), Python Script files (.py, .pyc, .pud, .pyw), Program Installers. The Producing Party agrees to provide a random sampling of documents removed through this process upon the Receiving Party's request.

XIV.   Parent-Child Relationships.

For email families, the parent-child relationships (the association between emails and attachments) shall be preserved. All email attachments should be consecutively produced with the parent email record. To the extent a non-ordinary course-of-business email was used to transfer over twenty-five attachments, solely for the non-substantive purpose of moving data, those attachments may be considered standalone documents.

XV.   Bates Numbering.

Bates numbering should be consistent across the production, contain no special characters, and be numerically sequential within a given document. If a Bates number or set of Bates numbers is skipped, the skipped number, or set of numbers, should be noted with a placeholder. All attachments to documents will be assigned Bates numbers that directly follow the Bates numbers on the documents to which they were attached. In addition, each TIFF image will have its assigned Bates number electronically "burned" onto the image.

XVI.   Excluded File Types.

Absent good cause shown, the parties agree that there is no need to collect ESI from the following sources:

1.   Deleted, slack, fragmented, or other data only accessible by forensics;

2.   Random access memory (RAM), temporary files, or other data difficult to preserve without disabling the operating system;

3.   On-line access data such as temporary internet files, history, cache, cookies, and the like;

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4.   ESI data stored in a backup system for the purpose of system recovery or information restoration, including but not limited to disaster recovery backup tapes, continuity of operations systems, or data or system mirrors or shadows that is duplicative of data produced from other sources; and

5.   Server, system, or network logs.

XVII. Redactions.

Any redactions shall be clearly indicated on the face of the TIFF image and in an appropriate metadata field. Where a document contains both responsive and non-responsive content, the non-responsive content shall not be redacted solely on the ground that the content is non-responsive. (Non-responsive content may, however, be redacted on other grounds, including, but not limited to, on the basis of attorney-client privilege or because it contains Personal Private Information.)   Where a responsive family of Documents contains both redacted and non-redacted content, or both produced and withheld Documents, the parties shall produce the remainder of the non-redacted portions of the family of documents as TIFFs rather than natives, except for Excel spreadsheets, which may be redacted in native form, and with the text/OCR corresponding to the non-redacted portions. The Producing Party shall produce a field in the DAT file denoting which documents contain redactions. Email header information (e.g., date, subject line, etc.) should not be redacted unless it is in its own right privileged. If the documents to be redacted and partially withheld from production are Microsoft Excel-type spreadsheets or other ESI that would otherwise be produced in native format in accordance with this ESI Protocol, but must be produced in TIFF format in order to effectuate the redactions, the entire Document

shall be produced in TIFF format, including, to the extent feasible, all non-privileged pages. The Producing Party shall also make reasonable efforts to ensure that any spreadsheets produced only as TIFF images are formatted so as to be legible, including undertaking reasonable efforts to ensure any hidden fields, rows, columns, cell values, etc. are visible. To the extent hidden information cannot be made visible, the Producing Party shall inform the Receiving Party in writing that hidden information is inaccessible. If the Receiving Party finds that the TIFF images of the Microsoft Excel-type file is illegible or formatted in such a way that the document does not resemble how it was kept in the usual course of business or requires formulas to be shown, the parties shall meet and confer. The parties shall meet and confer regarding any voluminous Microsoft Excel-type document if the Producing Party deems production in TIFF format would not be effective. If the items redacted and partially withheld from production are audio/visual files, the Producing Party shall provide the non-privileged portions of the content to the extent reasonably possible. If the content is a voice recording, the parties shall meet and confer to discuss the appropriate manner for the Producing Party to produce the non-privileged portion of the content. The parties shall meet and confer as to any challenges to redactions, and shall follow the procedures laid out in Paragraphs 13–15 of the Protective Order in addressing any such challenges. The production of a Document in a redacted form does not affect the Producing Party's obligation to timely assert and substantiate the assertion of privilege over the content in a privilege log.

XVIII. Encryption.

To maximize the security of information in transit, any media or file sharing electronic document repository on which Documents are produced shall be encrypted. Production deliverables provided via File Transfer Protocol ("FTP") shall be made available on a secured FTP connection. In such cases, the parties shall transmit the encryption key or password to a Receiving Party, under separate cover, contemporaneously with sending the encrypted media, or correspondence indicating the availability of the encrypted FTP deliverables.

XIX.   Exception Files.

The parties will use reasonable efforts to address documents that present processing or production problems (e.g., encrypted and/or protected files) ("Exception Files"), and will process and produce Exception Files to the extent reasonably possible to do so without undue burden or expense. To the extent encrypted or password-protected Documents are successfully processed, the parties have no duty to identify the prior encrypted status of such Documents.

XX.   Logs.

Documents or information that are withheld from production, in whole or in part, on the basis of privilege must be disclosed on a privilege log in compliance with the requirements of Federal Rule of Civil Procedure 26(b)(5). The Parties agree to provide privilege logs in excel or .csv format.

The parties further agree to provide privilege logs as soon as practicable, with specific deadlines for their production to be set by the Court or agreed to by the Parties.

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The following documents need not be logged on a privilege log: (a) communications exclusively between a party or its representative(s) and its in-house or outside counsel and any such counsel's agents after the commencement of first-filed case in this Litigation; and/or (b) work product created by counsel or at the direction of counsel after commencement of this Litigation.

XXI.   Hard-Copy Documents.

In addition to ESI addressed by this Protocol, the Producing Party shall perform a reasonable search to locate responsive non-ESI (i.e., paper documents, devices, prototypes, etc.) for the identified custodians and other relevant non-custodial sources, where appropriate, following a reasonable investigation. Nothing herein precludes a Party's right to inspect Hard-Copy Documents.

XXII. Miscellaneous Provisions

1.   **Effect of Order.** The parties' agreement to this Protocol is without prejudice to the right of any party to seek an order from this Court to rescind or amend this order for good cause shown. Nothing in this Protocol abridges the rights of any person to seek judicial review or to pursue other appropriate judicial action with respect to any discovery ruling made by the Court in this Litigation.

2.   **Effect on Discovery.** Nothing herein constitutes an admission by any party that any particular category of discovery is appropriate in this Litigation or that there exists producible ESI.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. Thomas Anderson
CHIEF UNITED STATES DISTRICT JUDGE

Date: October 28, 2022

EXHIBIT 1

<u>METADATA TO BE PRODUCED</u>

The load files accompanying ESI and scanned paper documents will include

the following fields, to the extent they exist and are reasonably extractable or are

reasonably capable of being procedurally generated and doing so will not cause undue

burden or expense:

Field	Category of Document for Population	Field Description
BEGBATES	All documents	First Bates identifier of item
ENDBATES	All documents	Last Bates identifier of item
BEGATTACH	All documents	Starting Bates number of a document family
ENDATTACH	All documents	Ending Bates number of a document family
PAGES	All documents	Number of pages
ATTACHCOUNT	All documents	Number of attachments embedded in a document
DOCTYPE	Email; Edocs	The type of document
FILEPATH	Email; Edocs	The file path from which the document was collected
REDACTED	All documents	(Y/N) field that identifies whether the document is redacted
TIMEZONE	Email; Edocs	The time zone for any time metadata in the Document
CUSTODIAN	All documents	Name of the original person from whose data the file is produced.
ALLCUSTODIANS	All documents	Name(s) of the person(s), in addition to the Custodian from whose data the file is produced.
CONFIDENTIALITY	All documents	Confidentiality designation applied in accordance with the Protective/Confidentiality Order
AUTHOR	eDocs	Document author from properties
FROM	Email	Sender of message
TO	Email	Recipient(s) of message
CC	Email	Copied recipient(s) of message

BCC	Email	Blind copied recipient(s) of message
SUBJECT	Email	Subject of message
DATESENT	Email	The sent date and time of the message in the format MM/DD/YYYY HH:MM
DATERECEIVED	Email	The received date and time of the message in the format MM/DD/YYYY HH:MM
FILENAME	Email; Edocs	Contents of this metadata field, or an equivalent
FILESIZE	Email; Edocs	Size of the file in bytes
HASH	Email; Edocs	Hash value of the document
TITLE	eDocs	Title from the Metadata of the Native File
DATECREATED	eDocs	Date and time file was created; MM/DD/YYYY HH:MM

Metadata field values, other than field values such as bates fields or custodian fields that by their nature require calculation or population rather than extraction, will be extracted from the native file where produced to the extent available at the time of collection and processing, except that they may be redacted if privileged or if the metadata field values contain information protected by law or Court order. Other than for fields that by their nature require calculation or population rather than extraction, this list of fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of ESI, that do not exist as part of the original metadata of the document, or that would be burdensome or costly to obtain.