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11 *Chris Clark and Aaron Spradlin*

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 PRB SUPPLY LLC, a Nevada limited
15 liability company,
16
17 Plaintiff,
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19 v.
20 PALE HORSE GRS L.L.P., a Tennessee
21 limited liability company; CHRIS CLARK, an
22 individual; and AARON SPRADLIN, an
23 individual,
24
25 Defendants.

CASE NO. 2:20-cv-01360-JAD-VCF

26 **STIPULATION AND PROTECTIVE**
27 **ORDER TO**
28 **PROTECT CONFIDENTIAL**
INFORMATION

Plaintiff PRB Supply LLC (“Plaintiff”) and Defendants Pale Horse GRS L.L.P., Chris Clark, and Aaron Spradlin (“Defendants”) (collectively the “Parties”), through their respective counsel of record in this action, hereby agree to this Stipulation and Protective Order to Protect Confidential Information (“Protective Order”), and further agree that this Court may enter an order on this Protective Order.

1. PURPOSE

The purpose of this Protective Order is to allow the Parties, to the extent permitted under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Nevada, such access to Protected Material, as defined below, as is necessary to prosecute or defend the Action, while at the same time to protect any confidential information contained within the Protected Material that may, and/or already

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1 has, come into the possession of any Party in connection with the Action. Nothing in the
2 Protective Order shall limit or modify the rights of any Party to use the information,
3 documents, or things which it produces to another Party.

4 **2. DEFINITIONS**

5 2.1. **Action**. “Action” means the action pending in the United States District Court for
6 the District of Nevada, Case No. 2:20-cv-01360-JAD-VCF, entitled *PRB Supply*
7 *LLC v. Pale Horse GRS L.L.P., Chris Clark, and Aaron Spradlin*.

8 2.2. **Counsel**. “Counsel” means counsel of record and authorized co-counsel of any
9 Party, and their employees and support personnel, jury consultants, electronic
10 discovery consultants and document vendors, trial graphics personnel and other
11 assistants, who are not employees of a Party and to whom it is necessary to disclose
12 Protected Material in the Action.

13 2.3. **Independent Expert**. “Independent Expert” means an expert or independent
14 consultant who is not an employee of a Party and is retained solely to advise and
15 assist Counsel in the preparation or trial of the Action, or retained to give expert
16 testimony, or retained for both purposes, and his or her secretarial or other assistants,
17 to whom it is necessary to disclose Protected Material in the Action.

18 2.4. **Party**. “Party” or “Parties” mean the parties to the Action, including their respective
19 officers, directors, employees and agents (but not Counsel).

20 2.5. **Produced Material**. “Produced Material” means any information, document, file,
21 electronically stored information (“ESI”), or tangible thing upon which any
22 expression, communication, or representation has been recorded by any means, or
23 any response to any discovery request (including by way of example document
24 requests, interrogatories, requests for admissions, notices of deposition, requests to
25 inspect, and deposition subpoenas), or portions thereof, to be provided, or already
26 provided, by any Producing Party or third party to any other Party, in connection
27 with the Action.
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1 2.6. **Producing Party.** “Producing Party” means a Party or third party and its officers,
2 directors, employees and agents (including Counsel), that produces or otherwise
3 makes available Produced Material to a Receiving Party.

4 2.7. **Receiving Party.** “Receiving Party” means a Party and all its officers, directors,
5 employees and agents (including Counsel), that receive Produced Material from a
6 Producing Party.

7 3. **PROTECTED MATERIAL.** Protected Material as used in this Protective Order shall
8 mean any Produced Material that contains information: (A) in which the Producing Party
9 has a protected privacy interest under federal or state law; or (B) that has not been made
10 publicly available (as a result of legal or ethical means) and from which the Producing Party
11 derives independent economic value, actual or potential, from not being generally known to
12 the public or to other persons who can obtain economic value from its disclosure or use,
13 including but not limited to financial records and projections, contractors’ bid preparation
14 documents, and cost estimating procedures. The use and dissemination of any Protected
15 Material by a Receiving Party is strictly limited to the Action. Protected Material may not
16 be used or disseminated for any other purpose without the written consent of the Producing
17 Party, or by order of the Court.

18 3.1. **Designation of Protected Material.** A Producing Party, at the time of producing
19 Produced material, or as soon as the Producing Party reasonably determines the need
20 therefore, may designate any Produced Material as Protected Material by producing
21 the documents claimed Protected Material marked with the legend
22 “CONFIDENTIAL – Subject to Protective Order.” To the extent possible, the
23 legend should be placed by the Producing Party on each page of the Protected
24 Material. Where the Producing Party is unable to place the legend on each page (or
25 it is commercially unreasonable to do so), for instance where the Producing Party
26 seeks to produce a native electronic file, the Producing Party should take other
27 precautions to flag the information as Protected Material, including, but not limited
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1 to, placing the legend in the file name of the native electronic file. The Producing
2 Party shall act in good faith in attempting to limit the amount of Produced Material
3 that is designated as Protected Material. If only a portion of certain Produced
4 Material qualifies as Protected Material, the Producing Party shall act in good faith
5 to limit the Protected Material designation to only that portion.

6 3.2. **Designation Not Determinative of Status.** The Producing Party's designation of
7 Produced Material as Protected Material does not create a presumption that the
8 materials are Protected Material, nor shall the Receiving Party's receipt of Protected
9 Material be a determination or admission by the Receiving Party that such material
10 is in fact protected as Protected Material. The Receiving Party shall not be obligated
11 to challenge a "Protected Material" designation at the time of receipt, and a failure
12 to do so shall not preclude a later challenge to the propriety of such a designation.
13 The fact that Produced Material is not designated as Protected Material shall not, in
14 and of itself, preclude a party from later seeking to designate such material as

15 4. **PERSONS WITH ACCESS TO PROTECTED MATERIAL.** Protected Material may
16 not be disclosed or discussed in any manner with any entity or person except for the
17 following:

18 4.1. **Counsel.** Each Party's respective Counsel shall have access to and may use any
19 Protected Material only for the purposes of prosecuting, defending, or attempting to
20 settle the Action.

21 4.2. **Parties.** A Party to the litigation, as distinguished from that Party's Counsel and
22 any Independent Experts, shall have access to and may use Protected Material only
23 for the purposes of the Action and only after complying with Section 5 of this
24 Protective Order.

25 4.3. **Independent Experts.** Counsel for a Receiving Party may make any Protected
26 Material available to its Independent Expert or to another Party's Independent
27 Expert only after complying with Section 5 of this Protective Order.
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1 **5. ACKNOWLEDGEMENT OF PROTECTIVE ORDER.** Except when used in a
2 deposition or court, before obtaining access to any copies of Protected Material covered by
3 this Protective Order, each person (other than Counsel) who is permitted to have access to
4 such material must signify assent to, and agree to be bound by, the terms of this Protective
5 Order by executing the acknowledgement attached as Appendix A hereto, indicating that
6 he or she has read and understood this Protective Order and agrees to be bound by its terms.
7 The acknowledgements shall not be produced in connection with the Action but shall be
8 confidentially maintained by Counsel for the Receiving Party until after complete
9 resolution of the Action, including any appeal.

10 **6. HANDLING OF PROTECTED MATERIAL**

11 6.1. **General.** All Protected Material is to be used solely for the purposes of the Action.
12 Persons having access to Protected Material shall not disclose or provide Protected
13 Material to any person not authorized under Section 4 of this Protective Order
14 without written permission from Counsel for the Producing Party.

15 6.2. **Protected Materials Filed With Court.** Any Party that wishes to file or lodge
16 Protected Material with the Court must file or lodge the Protected Material under
17 seal in accordance with Section 7 of this Protective Order. This includes any briefs,
18 transcripts, exhibits, depositions, or documents that contain, comprise, summarize,
19 or quote from Protected Material. To Parties agree to work in good faith concerning
20 sealing issues. To the extent the Court denies any motion or application to seal, the
21 Parties agree to work in good faith to explore alternatives for protecting the Protected
22 Material.

23 6.3. **Deposition Transcripts.** Protected Material may be used at a deposition in
24 accordance with this Protective Order. During the deposition, counsel seeking to
25 use or refer to Protected Material shall state, on the record, that such Protected
26 Material is subject to this Protective Order and Order and that deposition questions
27 and answers relating to the Protected Material are to be treated as Protected Material,
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1 and that the portion of the deposition transcript which relates to the Protected
2 Material shall also be marked and treated as Protected Material. To the extent the
3 deponent has not already complied with Section 5 of this Protective Order, the Party
4 seeking to introduce the Protected Material as an exhibit at the deposition shall seek
5 to have the deponent comply with Section 5 of this Protective Order. Whether the
6 Party seeking to introduce the exhibit is successful in obtaining the deponent's
7 compliance with Section 5 of this Protective Order, the Parties should work together
8 to ensure that the deponent does not leave the deposition with a physical or electronic
9 copy of the Protected Material and the confidential portion of the deposition
10 transcript relating to the Protected Material is not retained by the deponent (whether
11 in physical or electronic format).

12 6.4. **Return of Protected Material After Final Disposition or Termination of**
13 **Participation in the Action.** Once participation in the Action by any Receiving
14 Party that obtained Protected Material has been terminated or otherwise finally
15 concluded, Counsel for the Receiving Party shall either return all Protected Material
16 in the possession of the Receiving Party or its agents to Counsel for the Producing
17 Party or dispose of all Protected Material in some other manner agreed upon with
18 Counsel for the Producing Party. Protected Material retained by Counsel of a
19 Receiving Party shall retain the status of Protected Material despite termination of
20 this Action, and shall be treated in accordance with the terms of this Protective
21 Order, unless the Parties otherwise agree or the Court otherwise orders. However,
22 (a) the Parties further agree that any information learned from that Protected
23 Material that has been returned or destroyed shall remain confidential pursuant to
24 the terms of this Protective Order; and (b) this Protective Order shall survive the
25 termination of this action, including any appeals thereof, and the Court shall retain
26 continuing jurisdiction to enforce or resolve any dispute concerning the use of
27 information disclosed hereunder.
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1 6.5. **Advice of Counsel.** Nothing in this Protective Order shall bar or otherwise restrict
2 Counsel from rendering advice to a Party with respect to the Action, and in the
3 course thereof, relying upon any Protected Material. However, in rendering such
4 advice and in otherwise communicating with a Party, such Counsel shall not disclose
5 the contents of any Protected Material contrary to the terms of intent of this
6 Protective Order.

7 6.6 **Other Actions And Proceedings.** If a Receiving Party (a) is subpoenaed in another
8 action or proceeding, (b) is served with a demand in another action or proceeding in
9 which it is a party, or (c) is served with any legal process by one not a party to this
10 Protective Order, seeking discovery materials which were produced or designated
11 as containing Protected Material pursuant to this Protective Order, the Receiving
12 Party shall give prompt written notice by e-mail or facsimile transmission to Counsel
13 for the Producing Party within five (5) business days of receipt of such subpoena,
14 demand or legal process or such shorter notice as may be required to provide the
15 Producing Party with the opportunity to object to the immediate production of the
16 requested discovery materials to the extent permitted by law. The Receiving Party
17 shall advise the Producing Party in writing of the following: (i) the information,
18 documents, materials, items and things sought by the subpoena, demand or other
19 legal process; (ii) the date on which compliance with the subpoena, demand or other
20 legal process is requested or required; (iii) the location at which compliance with the
21 subpoena, demand or other legal process is requested or required; (iv) the identity
22 of the party serving the subpoena, demand or other legal process; and (v) the case
23 name, jurisdiction, and other information reasonably necessary to identify the other
24 action or proceeding in which the subpoena, demand or other legal process has been
25 issued. Should the person seeking access to the Protected Material take action
26 against the Receiving Party or anyone else covered by this Protective Order to
27 enforce such a subpoena, demand or other legal process, the Receiving Party shall
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1 respond by setting forth the existence of this Protected Material. However, where
2 the Producing Party has been given notice pursuant to this paragraph, the Parties
3 agree that the Producing Party shall bear the time and expense of any motion practice
4 or other court action associated with protecting its Protected Material from discovery
5 by any party seeking the Protected Material through subpoena, demand, or other
6 legal process.

7 **7. PROCEDURE FOR FILING PROTECTED MATERIAL UNDER SEAL**

8 7.1. A Party that wishes to file or lodge its own Protected Material with the Court must
9 comply with all applicable rules for submitting materials under seal, including, but
10 not limited to the requirements under federal law and the Local Rules. LR IA 10-5

11 **8. CHALLENGING A PROTECTED MATERIAL DESIGNATION.** A Receiving Party

12 wishing to challenge a Protected Material designation must first attempt to meet and confer
13 in good faith with the Producing Party in an effort to informally resolve such designation.
14 If reasonable meet and confer efforts are unsuccessful, the Party challenging the Protected
15 Material designation may move or apply to the Court to have such materials stripped of their
16 Protected Material designation. In the event of such a motion or application, the Producing
17 Party shall bear the burden of proving that the materials qualify as Protected Material. Until
18 the Court rules on such motion or application, the materials shall remain Protected Material.

19 **9. CLAWBACK PROVISION.** If a Producing Party contends that it has inadvertently

20 disclosed or produced material that it alleges is protected by the attorney-client privilege,
21 the work product doctrine, or any other privilege or protection provided under applicable
22 law, or is otherwise immune to discovery (the "Subject Privileged Material"), then the
23 Producing Party shall immediately notify the Receiving Party in writing upon its discovery
24 of the inadvertent disclosure or production. It is agreed that either a Producing Party or a
25 Receiving Party may challenge the claim to inadvertent disclosure as having been waived
26 and such waiver may be analyzed under applicable law. Upon receiving notification of the
27 inadvertent disclosure of the Subject Privileged Material, and in no event later than three
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1 (3) business days, the Receiving Party shall immediately return, sequester, or destroy any
2 and all copies of the Subject Privileged Material identified in the notice, and may not use,
3 produce or disclose to other persons or non-parties the Subject Material until the claim of
4 privilege or protection is resolved. If the Receiving Party produces, discloses, or uses the
5 Subject Material before being notified of its alleged privileged or protected nature, then it
6 shall take reasonable measures necessary to retrieve it and preclude its further use. Upon
7 request, the Receiving Party shall certify, in writing, that it has complied with the terms and
8 conditions set forth in this paragraph; however, the Receiving Party shall not waive or
9 prejudice any right it may have to challenge the alleged privilege or protected nature of the
10 Subject Privileged Material, nor shall it waive or prejudice any right it may have to
11 challenge or contest the Producing Party's claim of inadvertent production or disclosure. If,
12 after undertaking an appropriate meet-and-confer process, a resolution cannot be reached
13 concerning the production or disclosure of the Subject Privileged Material, any party may
14 file a motion with the Court for a determination of the claim and the Parties agree that the
15 Subject Privileged Material shall be protected via appropriate sealing or in camera
16 submission. The Subject Privileged Material shall be preserved until the claim is resolved.
17 If a Receiving Party believes in good faith that material received from a Producing Party or
18 person or non-party is potentially covered by the attorney-client privilege, the work product
19 doctrine or any other privilege or protection provided under applicable law, then the
20 Receiving party shall notify the other party or person or non-party in writing within a
21 reasonable time that it has possession of the material in question. If, in response to this
22 notification, the party asserts that the material may be privileged or protected under
23 applicable law, then the parties shall comply with the process set forth in this paragraph.
24 This Parties further agree that this paragraph's clawback rights and procedures shall apply
25 to all material produced in discovery whether or not it is designated "CONFIDENTIAL –
26 Subject to Court Order."

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- 1 **10. RIGHT TO FURTHER RELIEF.** This Protective Order, and any order hereon, is without
2 prejudice to the right of any Party to apply to the Court for relief from any of its provisions
3 or to seek different or additional protection for any particular Produced Material. Further,
4 the Parties agree that this Protective Order may be amended from time to time by written
5 agreement of counsel for the Parties, which agreement shall be submitted to the Court and
6 only effective upon the Court’s approval.
- 7 **11. RIGHT TO ASSERT OTHER OBJECTIONS.** This Protective Order, and any order
8 thereon, shall not waive or limit the Parties’ rights to assert a claim of privilege, other
9 recognized protection, or other evidentiary objection to production, Protective Order, or
10 other use of Produced Material.
- 11 **12. Application to Third Parties.** This Protective Order shall inure to the benefit of and may
12 be invoked and enforced by third parties with respect to documents and information
13 produced by them in the course of pretrial discovery in this action (e.g., in response to
14 subpoena) and designated by them in the manner provided herein. Any third party invoking
15 the Protective Order shall comply with, and be subject to, all other applicable sections of
16 the Protective Order.
- 17 **13. No Waiver of Privilege.** This Protective Order will not prejudice the right of any party or
18 nonparty to oppose production of any information on the ground of attorney-client privilege,
19 work product privilege or any other privilege or protection provided under the law.
- 20 **14. Injunctive Relief Available.** Each Party acknowledges that monetary remedies may be
21 inadequate to protect each party in the case of unauthorized disclosure or use of Protected
22 Material and that seeking injunctive relief may be appropriate to protect each party’s rights
23 in the event there is any such unauthorized disclosure or use of Confidential Information, in
24 addition to whatever relief may be available at law or in equity.

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IT IS SO STIPULATED.

Dated this ____ day of _____, 2021

Dated this ____ day of _____, 2021

McDONALD CARANO LLP

RICE REUTHER SULLIVAN &
CARROLL, LLP

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ORDER

IT IS SO ORDERED.



Cam Ferenbach
United States Magistrate Judge

DATED 9-13-2021

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APPENDIX A TO PROTECTIVE ORDER

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I, _____, have received, read, understand, and hereby agree to be bound by the terms of the foregoing Protective Order (and any Court Order entered on the Protective Order), entered in Case No. 2:20-cv-01360-JAD-VCF, entitled *PRB Supply LLC v. Pale Horse GRS L.L.P., Chris Clark, and Aaron Spradlin*. which I acknowledge have been provided to me. I agree not to disclose, discuss, or otherwise use Protected Material (as defined in the Protective Order) except to the extent allowed under, and in compliance with, the Protective Order. I further agree to take reasonable precautions to ensure that any Protected Material provided to me remains in a secure and confidential location so as to prevent unauthorized access to such material.

I understand that my access to Protected Materials in this case is solely as a result of, and conditioned upon, my acceptance of, and agreement to be bound by, the terms of this Protective Order. I recognize that any failure to comply with the Protective Order, and any Court Order entered thereon, may result in action being taken against me. I hereby consent to the jurisdiction of the United States District Court, District of Nevada, for the sole purpose of enforcing the Protective Order and any Court Order entered thereon.

Dated: _____ Signed: _____

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