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17 ABF FREIGHT SYSTEM, INC.

18 UNITED STATES DISTRICT COURT  
19 DISTRICT OF NEVADA

20 JACKIE MARQUIS,  
21 Plaintiff,  
22 v.  
23 ABF FREIGHT SYSTEM, INC.,  
24 Defendant.

25 Case No.: 3:23-CV-00315-LRH-CLB  
26 **ORDER GRANTING**  
27 **CONFIDENTIALITY AGREEMENT**  
28 **AND STIPULATED PROTECTIVE**  
**ORDER**

1 Pursuant to Fed. R. Civ. P. 26(c) and subject to the Court's approval, this Confidentiality  
2 Agreement and Stipulated Protective Order ("Stipulation and Order") is entered into by and  
3 between Plaintiff Jackie Marquis ("Plaintiff") and Defendant ABF Freight System, Inc.  
4 ("Defendant") to facilitate the production of confidential, proprietary and/or private information  
5 during the course of discovery and pretrial proceedings in this action (the "Action").

6 **I. DEFINITIONS**

7 1. **Challenging Party.** A Party that challenges the designation of Discovery  
8 Material as "Confidential" under this Stipulation and Order.

9 2. **Confidential Discovery Material.** Any Discovery Material (regardless of how  
10 it is generated, stored or maintained) designated as "Confidential" pursuant to the terms of this  
11 Stipulation and Order.

12 3. **Designating Party.** Any Party or Non-Party who designates information or  
13 items for protection pursuant to the terms of this Stipulation and Order.

14 4. **Discovery Material.** Any information provided in the course of discovery in  
15 this Action, including, but not limited to, information contained in documents, testimony taken  
16 at depositions and transcripts thereof, deposition exhibits, and tangible things.

17 5. **Inadvertently Disclosed Information.** Information subject to a claim of  
18 attorney client privilege, attorney work product protection, or other applicable privilege, that a  
19 Producing Party inadvertently discloses to a Receiving Party in this Action.

20 6. **Non-Party.** Any person or entity that is not a Party to the Action.

21 7. **Party.** Any named Party to the Action.

22 8. **Producing Party.** A Party or Non-Party that produces Discovery Material in the  
23 Action.

24 9. **Receiving Party.** A Party that receives Discovery Material from a Producing  
25 Party in the Action.

26 10. **Exhibit A.** The Non-Disclosure Agreement annexed as Exhibit A hereto.  
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1 **II. SCOPE**

2 11. The protections conferred by this Stipulation and Order cover not only  
3 Confidential Discovery Material (as defined above), but also (1) any information copied or  
4 extracted from Confidential Discovery Material; (2) all copies, excerpts, summaries, or  
5 compilations of Confidential Discovery Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Confidential Discovery Material.  
7 However, the protections conferred by this Stipulation and Order do not cover the following  
8 information: (a) any information that is in the public domain at the time of disclosure to a  
9 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party  
10 as a result of publication not involving a violation of this Order, including becoming part of the  
11 public record through trial or otherwise; and (b) any information known to the Receiving Party  
12 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source  
13 who obtained the information lawfully and under no obligation of confidentiality to the  
14 Designating Party. Any use of Confidential Discovery Material at trial shall be governed by a  
15 separate agreement or order.

16 **III. DESIGNATING DISCOVERY MATERIAL**

17 12. Any Producing Party may designate as “Confidential” Discovery Material that  
18 the Party or non-Party believes in good faith consists of:

- 19 (a) any personal information of a sensitive nature regarding any individual;  
20 (b) proprietary information;  
21 (c) personnel-related information;  
22 (d) sensitive business information;  
23 (e) information constituting or relating to trade secrets;  
24 (f) personal and business financial information;  
25 (g) financial information not otherwise available or disclosed to the public;  
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1 (h) business plans and strategies, formulation, or research information,  
2 marketing plans, commercial information or trade secrets not otherwise available or disclosed  
3 to the public;

4 (i) projections or analyses;

5 (j) studies or analyses by internal or outside experts, attorneys or  
6 consultants;

7 (k) competitive analyses;

8 (l) organizational development and planning;

9 (m) marketing plans and strategies;

10 (n) pricing of goods and services;

11 (o) financial, tax, or accounting information;

12 (p) any information entitled to confidential treatment under the Federal  
13 Rules of Civil Procedure or other applicable laws or regulations, including information that is  
14 subject to U.S. or foreign privacy, data protection or secrecy laws; or

15 (q) any other category of information hereinafter given confidential status  
16 by the Court.

17 13. Notwithstanding the foregoing, nothing in this Stipulation and Order is intended  
18 to concede that any of the categories listed above are relevant or discoverable and nothing herein  
19 shall prejudice in any way any Party's or non-Party's objection to, or position concerning,  
20 production of the foregoing types of information.

21 14. Each Designating Party will engage in reasonable effort to limit any such  
22 designation to specific material that qualifies under this Stipulation and Order and the  
23 appropriate legal standards. To the extent it is practical to do so, the Designating Party will  
24 designate for protection only those parts of Discovery Material, that qualify for such protection.  
25 Mass, indiscriminate, or routinized designations are prohibited.

26 15. With respect to the "Confidential" portion of any Discovery Material other than  
27 deposition transcripts and exhibits, the Designating Party or its counsel may designate such  
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1 portion as “Confidential” by stamping or otherwise clearly marking as “Confidential” the  
2 protected portion of the Discovery Material in a manner that will not interfere with legibility or  
3 audibility.

4 16. With respect to deposition transcripts and exhibits, a Designating Party or its  
5 counsel may indicate on the record at the deposition or within 30 days of receipt of the final  
6 deposition transcript that the transcript, or a portion thereof, contains “Confidential”  
7 information. Transcripts containing “Confidential” testimony shall have a conspicuous legend  
8 printed on the title page indicating that the transcript contains “Confidential Information” and  
9 on each subsequent page that contains information designed as “Confidential” pursuant to the  
10 terms of this Stipulation and Order. Any designation of confidentiality of deposition and/or  
11 deposition exhibits, is subject to the other provisions of this Agreement and Order.

12 17. If prior to the trial in this Action, a Designating Party realizes that some  
13 portion(s) of Discovery Material that the Party previously produced without limitation should  
14 be designated as “Confidential,” it may so designate the Discovery Material by apprising the  
15 other Party in writing, and such designated portion(s) of Discovery Material will thereafter be  
16 treated as “Confidential” pursuant to the terms of this Stipulation and Order. Inadvertent failure  
17 to designate Discovery Material as “Confidential” will not waive confidentiality, but the  
18 Receiving Party retains the right to challenge such designation pursuant to the procedure set  
19 forth in this Stipulation and Order.

20 **IV. ACCESS TO AND USE OF CONFIDENTIAL DISCOVERY MATERIAL**

21 18. Any person subject to this Stipulation and Order who receives from any  
22 Producing Party Discovery Material that is designated as “Confidential” shall not disclose such  
23 Confidential Discovery Material except as expressly permitted herein. A Receiving Party may  
24 use Confidential Discovery Material that is disclosed or produced by another Party or by a Non-  
25 Party in connection with this case only in connection with this litigation. Such Confidential  
26 Discovery Material may be disclosed only to the categories of persons and under the conditions  
27 described in this Order.

1           19. Confidential Discovery Material must be stored and maintained by a Receiving  
2 Party at a location and in a secure manner that ensures that access is limited to the persons  
3 authorized under this Order.

4           20. No person subject to this Stipulation and Order other than the Producing Party  
5 shall disclose any of the Discovery Material designated by the Producing Party as  
6 “Confidential” to any other person whomsoever, except to:

7                   (a) A Receiving Party, who may share Confidential materials with her/its  
8 own officers, directors, and employees (including In-House Counsel) of the Receiving Party to  
9 whom disclosure is reasonably necessary for this Action;

10                   (b) in-house counsel of a party and outside counsel retained specifically for  
11 this Action, including any paralegal, clerical, or other assistant or staff member employed by  
12 such counsel and assigned to this matter so long as such person is advised of the obligations  
13 under, and agrees to be bound by, this Stipulation and Order;

14                   (c) the document’s author, its addressee, any person indicated on the face of  
15 the document as having received a copy, and any person reasonably and in good faith believed  
16 to have received a copy in the ordinary course of business or otherwise;

17                   (d) deponents, or witnesses in this Action, and their counsel, to whom  
18 disclosure is reasonably necessary in good faith for this litigation during or in specific  
19 preparation of the witness for deposition and provided they acknowledge and agree to be bound  
20 by the terms of this Stipulation and Order;

21                   (e) any person retained by a Party to serve as an expert witness or otherwise  
22 provide specialized advice to counsel in connection with this Action, including consulting  
23 experts provided they are specifically advised of and agree to be bound by the obligations under  
24 this Stipulation and Order;

25                   (f) court reporters, and other professional vendors to whom disclosure is  
26 reasonably necessary for this Action;

27                   (g) the Court and its support personnel;

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1 (h) any mediator, arbitrator, or other person engaged for the purpose of  
2 alternative dispute resolution regarding this Action; and

3 (i) any other person agreed upon in advance by all Parties to the Action in  
4 writing or on the record or any person as to whom the Court directs should have access.

5 21. Before disclosing any Confidential Discovery Material to any person identified  
6 in subparagraph IV.20(d), (e), (h) or (i) above, counsel shall provide such person with a copy  
7 of this Stipulation and Order and such person shall sign the Exhibit A hereto. Such counsel shall  
8 retain each signed Exhibit A.

9 22. If a Receiving Party learns that it has disclosed Confidential Discovery Material  
10 to any person not authorized to receive such information by this Stipulation and Order, the  
11 Receiving Party must immediately: (i) notify in writing the Producing Party of the unauthorized  
12 disclosure; (ii) use best efforts to retrieve or destroy all copies of the Confidential Discovery  
13 Material produced without authorization; (iii) inform the person(s) to whom unauthorized  
14 disclosure was made of the terms of this Stipulation and Order; and (iv) request that such  
15 person(s) either return or destroy the Confidential Discovery Material inadvertently disclosed  
16 to them or, if appropriate under the terms of this Stipulation and Order, execute Exhibit A.

17 23. This Stipulation and Order does not prohibit a Producing Party's use of its own  
18 Confidential Discovery Material for any purpose.

19 **V. CONFIDENTIAL DISCOVERY MATERIAL SUBPOENAED OR ORDERED**  
20 **PRODUCED IN OTHER LITIGATION**

21 24. If a Party or Outside Counsel of a party is served with a subpoena or a court  
22 order issued in other litigation that seeks to compel disclosure of any information or items  
23 designated in this Action as "CONFIDENTIAL," that Party or their Outside Counsel must:

24 (a) promptly notify in writing the Designating Party. Such notification shall  
25 include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to  
27 issue in the other litigation that some or all of the material covered by the subpoena or order is  
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1 subject to this Stipulation and Order. Such notification shall include a copy of this Stipulation  
2 and Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued  
4 by the Designating Party whose Confidential Discovery Material may be affected.

5 25. If the Designating Party timely seeks a protective order, the Party or Outside  
6 Counsel of a Party served with the subpoena or court order shall not produce any information  
7 designated in this action as “CONFIDENTIAL” before a determination by the court from which  
8 the subpoena or order issued, unless the Party or Outside Counsel has obtained the Designating  
9 Party’s permission. The Designating Party shall bear the burden and expense of seeking  
10 protection in that court of its confidential material – and nothing in these provisions should be  
11 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
12 directive from another court.

13 **VI. A NON-PARTY’S CONFIDENTIAL DISCOVERY MATERIAL SOUGHT TO**  
14 **BE PRODUCED IN THIS LITIGATION**

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

20 **VII. FILING CONFIDENTIAL DISCOVERY MATERIAL**

21 27. Confidential Discovery Material filed with the Court, and portions of pleadings,  
22 motions or other papers filed with the Court that disclose such Confidential Discovery Material,  
23 shall be filed under seal with the Clerk of the Court in accordance with Local Rule IA 10-5 and  
24 kept under seal until further order of the Court. The parties will use their best efforts to minimize  
25 such sealing. Any party may challenge such sealing in accordance with applicable law. Any  
26 motion regarding filing confidential information and motions to seal will comply with the  
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1 requirements of *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and  
2 *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

3 **VIII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 28. A Party may object to the designation of Discovery Material as “Confidential”  
5 at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is  
6 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a  
7 significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
8 confidentiality designation by electing not to mount a challenge promptly after the original  
9 designation is disclosed.

10 (a) **Meet and Confer.** The Challenging Party shall initiate the dispute  
11 resolution process by providing written notice of each designation it is challenging and  
12 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been  
13 made, the written notice must recite that the challenge to confidentiality is being made in  
14 accordance with this specific paragraph of the Protective Order. The parties shall attempt to  
15 resolve each challenge in good faith and must begin the process by conferring directly (in voice  
16 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date  
17 of service of notice. In conferring, the Challenging Party must explain the basis for its belief  
18 that the confidentiality designation was not proper and must give the Designating Party an  
19 opportunity (at least five (5) business days) to review the designated material, to reconsider the  
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
21 designation. A Challenging Party may proceed to the next stage of the challenge process only  
22 if it has engaged in this meet and confer process first or establishes that the Designating Party  
23 is unwilling to participate in the meet and confer process in a timely manner.

24 29. If the challenge cannot be resolved without judicial intervention, the Party  
25 asserting the challenge may apply to the Court for relief. During the pendency of the challenge,  
26 the Discovery Material subject to the challenge shall continue to be treated as “Confidential.”  
27 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

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1 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
2 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
3 sanctions.

4 **IX. NO WAIVER**

5 30. If a Producing Party inadvertently discloses to a Receiving Party information  
6 subject to a claim of privilege or other protection, such disclosure alone shall not constitute or  
7 be deemed a waiver or forfeiture of any such claim with respect to the Inadvertently Disclosed  
8 Information.

9 31. If a Producing Party makes a claim of inadvertent disclosure, the Parties shall  
10 comply with the procedure set forth in Fed. R. Civ. P. 26(b)(5)(B).

11 32. The return, sequester or destruction of any Inadvertently Disclosed Information  
12 shall not in any way preclude the Receiving Party from moving the Court for an order  
13 compelling production of the Inadvertently Disclosed Information. Prior to filing any such  
14 motion, however, the Parties shall first attempt in good faith to resolve the dispute and, if an  
15 agreement cannot be reached, the Receiving Party shall move to compel production of the  
16 Inadvertently Disclosed Information. The Producing Party retains the burden of establishing  
17 the privileged or protected nature of any Inadvertently Disclosed Information.

18 **X. IMMEDIATE AND CONTINUING EFFECT**

19 33. This Stipulation and Order shall become effective among the Parties  
20 immediately upon its execution, and shall survive any settlement, discontinuance, dismissal,  
21 judgment or other disposition of the Action.

22 34. A Producing Party may request, within 60 days of the final disposition of the  
23 Action (including the time for appeal and resolution of all appeals), that the Receiving Party  
24 take reasonable steps to return to the Producing Party or destroy (at the Receiving Party's  
25 discretion), all Confidential Discovery Material produced by the Producing Party, including but  
26 not limited to records of Plaintiff's psychological treatment produced in this lawsuit, unless  
27 prohibited by applicable law or Court Order from doing so. The Receiving Party shall comply  
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1 with the foregoing within sixty (60) days of a proper request by the Producing Party. Counsel  
2 may retain a copy of all pleadings, motion papers, transcripts, legal memoranda,  
3 correspondence or attorney work product, even if such material contains Confidential  
4 Discovery Material. Any such retained information remains subject to the terms of this  
5 Stipulated Protective Order.

6 SO STIPULATED AND AGREED.

7 DATED: November 15, 2023

**DICKINSON WRIGHT PLLC**

9 By: /s/ Justin J. Bustos

Justin J. Bustos

11 Attorneys for Defendant  
12 ABF FREIGHT SYSTEM, INC.

13 DATED: November 15, 2023

**HUNTON ANDREWS KURTH LLP**

15 By: 

16 Emily Burkhardt Vicente

17 Attorneys for Defendant  
18 ABF FREIGHT SYSTEM, INC.

19  
20 DATED: 11/15, 2023

**MARK MAUSERT LAW**

21  
22 By: 

23 Mark Mausert

24 Attorneys for Plaintiff  
25 JACKIE MARQUIS  
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ORDER

The Court will only retain jurisdiction over this protective order while the case is pending, and its jurisdiction will cease upon dismissal of the case.

IT IS SO ORDERED.

DATED: November 16, 2023

A handwritten signature in black ink, appearing to read "J. Galdin", is written above a horizontal line.

UNITED STATES MAGISTRATE JUDGE

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Exhibit A

*Marquis v. ABF Freight System, Inc.*  
United States District Court, District of Nevada  
Case No. 3:23-CV-00315-LRH-CLB

NON-DISCLOSURE AGREEMENT

I, \_\_\_\_\_, under penalty of perjury, 28 U.S.C. § 1746, declare that:

1. Information, including documents and things, designated as “Confidential” as defined in the Stipulation and Order entered in the above-captioned action (“Protective Order”), is being provided to me pursuant to the terms and restrictions of the Protective Order.

2. I have been given a copy of and have read the Protective Order.

3. I am familiar with the terms of the Protective Order, and I agree to comply with and to be bound by its terms.

4. I submit to the jurisdiction of the United States District Court for the District of Nevada for enforcement of the Protective Order.

5. I agree not to use any Confidential Information disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation, and not to disclose any of this information to persons other than those specifically authorized by the Protective Order, without the express written consent of the party who designated the information as confidential or by order of the presiding judge or arbitrator.

Signed at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature