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15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA

17 ERIC CLARKE, individually, and on  
 18 behalf of other members of the general  
 public similarly situated,

19 Plaintiff,

20 v.

21 FIRST TRANSIT, INC., a Delaware  
 corporation; FIRST TRANSIT  
 22 TRANSPORTATION LLC, a Delaware  
 limited liability company;  
 23 FIRSTGROUP AMERICA, INC.; a  
 Florida corporation; FIRST TRANSIT, a  
 24 business entity form unknown, FIRST  
 TRANSIT TRANSPORTATION, a  
 25 business entity form unknown;  
 FIRSTGROUP AMERICA COMPANY,  
 26 a business entity form unknown; and  
 DOES 1 through 10, inclusive,

27 Defendants.

Case No. CV 07-06476 GAF (MANx)

PROTECTIVE ORDER ENTERED  
 PURSUANT TO THE PARTIES'  
 STIPULATION

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the  
2 parties' Stipulated For Protective Order ("Stipulation") filed on March 17, 2011, the  
3 terms of the protective order to which the parties have agreed are adopted as a  
4 protective order of this Court (which generally shall govern the pretrial phase of this  
5 action) except to the extent, as set forth below, that those terms have been  
6 substantively modified by the Court's amendment of Paragraphs 10, 12, 13, 17, and  
7 18 of the Stipulation.

8 The parties are expressly cautioned that the designation of any information,  
9 document, or thing as "Confidential," or other designation(s) used by the parties, does  
10 not, in and of itself, create any entitlement to file such information, document, or  
11 thing, in whole or in part, under seal. Accordingly, reference to this Protective Order  
12 or to the parties' designation of any information, document, or thing as  
13 "Confidential," or other designation(s) used by the parties, is wholly insufficient to  
14 warrant a filing under seal.

15 There is a strong presumption that the public has a right of access to judicial  
16 proceedings and records in civil cases. In connection with non-dispositive motions,  
17 good cause must be shown to support a filing under seal. The parties' mere  
18 designation of any information, document, or thing as "Confidential," or other  
19 designation(s) used by parties, does not — **without the submission of competent**  
20 **evidence, in the form of a declaration or declarations, establishing that the**  
21 **material sought to be filed under seal qualifies as confidential, privileged, or**  
22 **otherwise protectable** — constitute good cause.

23 Further, if sealing is requested in connection with a dispositive motion or trial,  
24 then compelling reasons, as opposed to good cause, for the sealing must be shown,  
25 and the relief sought shall be narrowly tailored to serve the specific interest to be  
26 protected. See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir.  
27 2010). For each item or type of information, document, or thing sought to be filed or  
28 introduced under seal in connection with a dispositive motion or trial, the party

1 seeking protection must articulate compelling reasons, supported by specific facts and  
2 legal justification, for the requested sealing order. **Again, competent evidence**  
3 **supporting the application to file documents under seal must be provided by**  
4 **declaration.**

5 Any document that is not confidential, privileged, or otherwise protectible in its  
6 entirety will not be filed under seal if the confidential portions can be redacted. If  
7 documents can be redacted, then a redacted version for public viewing, omitting only  
8 the confidential, privileged, or otherwise protectible portions of the document, shall be  
9 filed. Any application that seeks to file documents under seal in their entirety should  
10 include an explanation of why redaction is not feasible.

11 Notwithstanding any other provision of this Protective Order, in the event that  
12 this case proceeds to trial, all information, documents, and things discussed or  
13 introduced into evidence at trial will become public and available to all members of  
14 the public, including the press, unless sufficient cause is shown in advance of trial to  
15 proceed otherwise.

16 **THE PARTIES ARE DIRECTED TO REVIEW CAREFULLY AND ACT**  
17 **IN COMPLIANCE WITH ALL ORDERS ISSUED BY THE HONORABLE**  
18 **GARY A. FEES, UNITED STATES DISTRICT JUDGE, INCLUDING THOSE**  
19 **APPLICABLE TO PROTECTIVE ORDERS AND THE TREATMENT OF**  
20 **CONFIDENTIAL INFORMATION.**

21  
22 **TERMS OF PROTECTIVE ORDER**

23 **Scope**

24 1. This Protective Order shall govern all documents produced or disclosed  
25 in this action by either party (the “Designating Party”) to the other party (“the  
26 Receiving Party”).

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1 **Confidential Information**

2 2. “Confidential Information” means any information contained in a  
3 document that is stamped “Confidential.” Confidential Information includes, but is  
4 not limited to:

5 (a) Information about current, past, or prospective employees that is of  
6 a confidential or private nature, including, but not limited to, current or former  
7 employees’ names and contact information, wage information, medical information  
8 and job performance-related documentation; or

9 (b) Proprietary, confidential or sensitive company business  
10 information.

11 3. Stamping “Confidential” on the cover of a multiple page document shall  
12 classify all pages of the document as confidential unless otherwise indicated by the  
13 disclosing party. Marking or stamping “Confidential Information” on a label on any  
14 electronic storage medium shall designate the entire contents of such electronic  
15 storage medium as “Confidential Information.”

16 **Permissible Disclosure of Confidential Information**

17 4. Subject to Paragraph 5, Confidential Information produced under this  
18 Protective Order shall not be disclosed by any person who has received such  
19 Confidential Information through this action to any other person except to:

20 (a) Attorneys of record for the parties and their respective associates,  
21 paralegals, clerks, and employees involved in the conduct of this litigation as well as  
22 Defendants’ in-house attorneys, as attorneys employed by their corporate parents  
23 and/or corporate affiliates, and their respective paralegals, clerks and employees;

24 (b) Plaintiff Eric Clarke and any other representative plaintiff who  
25 may be added to the litigation;

26 (c) Current or former employees of Defendants or their parent or  
27 affiliated companies who may be witnesses, but only insofar as such Confidential  
28 Information is relevant to their testimony;

1 (d) Any outside consultant, expert, or vendor (and any employees  
2 thereof who would, in the course and scope of their employment, handle the at-issue  
3 documents) utilized by the attorneys of record for the parties, whether formally  
4 retained or not;

5 (e) Any person who was involved in the preparation of the documents,  
6 materials, or the discovery responses containing Confidential Information or who  
7 lawfully received or reviewed the documents or to whom the Confidential Information  
8 has previously been made available other than by one receiving such Confidential  
9 Information in connection with this action;

10 (f) Subject to Paragraphs 9 through 11, any witness during a  
11 deposition taken in this case, but only insofar as such Confidential Information is  
12 relevant to their testimony;

13 (g) Any other person with the prior written consent of the Designating  
14 Party or pursuant to an order issued by this Court;

15 (h) Stenographic employees, court reporters and videographers  
16 recording or transcribing testimony in this action; and

17 (i) The Court and court personnel to whom it is necessary to disclose  
18 the information as well as any mediator(s) used to try to resolve the case.

19 5. Prior to the Receiving Party providing Confidential Information to any  
20 person described in paragraphs 4(e)-(g), such person shall be provided a copy of this  
21 Protective Order and shall agree in writing, in the form of the Protective Order  
22 Acknowledgment and Non-Disclosure Agreement (“**Non-Disclosure Agreement**”),  
23 attached hereto as Exhibit A, to be bound by the terms of this Protective Order. The  
24 Receiving Party shall retain all executed non-disclosure agreements until the end of  
25 the action. In the event of a possible violation of this Protective Order during the  
26 pendency of this litigation, and upon a showing of good cause, the Court may order  
27 production of the executed non-disclosure agreements to the Designating Party.  
28 Otherwise, these **Non-Disclosure Agreements** are strictly confidential and are not

1 subject to any discovery request during the pendency of this litigation. No more than  
2 thirty (30) calendar days after the end of litigation in the action as defined in  
3 Paragraph 6 below, the Receiving Party shall provide all executed **Non-Disclosure**  
4 **Agreements** to the Designating Party.

5 6. The action is at an end when: (i) a final judgment has been entered by  
6 the Court or the case has otherwise been dismissed with prejudice; (ii) the time for any  
7 objection to or request for reconsideration of such a judgment or dismissal has  
8 expired; (iii) all available appeals have concluded or the time for such appeals has  
9 expired; and (iv) any post-appeal proceedings have themselves concluded.

#### 10 **Use of Confidential Information**

11 7. Confidential Information shall only be used for preparing for, defending  
12 and prosecuting this case, including any claims on behalf of the named plaintiff(s) and  
13 any putative class members pending the completion of the judicial process **through**  
14 appeal. Confidential Information cannot be used for any other purpose in any other  
15 matter or proceeding for any reason whatsoever.

16 8. Notwithstanding any other provisions hereof, nothing herein shall restrict  
17 any party's counsel from rendering advice to its client with respect to this action and,  
18 in the course thereof, relying upon Confidential Information provided that, in  
19 rendering such advice, counsel shall not disclose the other party's Confidential  
20 Information other than in a manner provided for in this Protective Order.

21 9. If Confidential Information is used in any depositions taken in this  
22 matter, the original transcript of the deposition, and all copies thereof shall be stamped  
23 "Confidential." Testimony taken at a deposition may be designated as Confidential  
24 Information by making a statement to that effect on the record at the deposition, as to  
25 the specific testimony or items that are claimed to be Confidential. If any portions of  
26 the deposition transcript and/or video or audio versions of the depositions containing  
27 Confidential Information, or references thereto, are filed with the Court, it shall be  
28 done in compliance with Paragraph 19 of the Protective Order.







1 Party will then have forty-five (45) calendar days after the conference of counsel to  
2 file a motion to support the confidentiality designation. The objecting party must  
3 serve the written objection sufficiently in advance of the discovery cut-off date so that  
4 the motion to support the confidentiality designation may be heard prior to the  
5 discovery cut-off date. The burden of proof to demonstrate confidential treatment of  
6 any information at all times shall remain with the Designating Party.

7 16. If the Designating party does not file a motion to support the  
8 confidentiality designation within forty-five (45) calendar days after the conference of  
9 counsel, the confidentiality designation shall be deemed removed.

10 **Filing Confidential Information in Court Records**

11 17. The parties shall use the following procedure for submitting to the Court  
12 papers consisting of, relating to, containing, incorporating, reflecting, describing or  
13 attaching Confidential Information:

14 For all pretrial discovery and non-discovery-related motions,  
15 memoranda of law, certification(s), **declaration(s), and**  
16 exhibit(s) annexed thereto that contains Confidential  
17 Information shall be **submitted for filing** in accordance  
18 with Local Rule 79 by placing the original and judge's copy  
19 of the document in sealed, separate envelopes with a copy of  
20 the title page attached to the front of each envelope.  
21 Conformed copies need not be placed in sealed envelopes.  
22 Confidential material to be placed under seal, shall not be  
23 electronically filed but shall be filed manually in the manner  
24 prescribed by Local Rule 79-5. A Notice of Manual Filing  
25 shall also be electronically filed identifying materials being  
26 manually filed.

21 **Competent evidence to support the propriety of the requested filing under seal**  
22 **must be presented to the Court along with the request for filing under seal.**

23 18. All Confidential Information contained in documents designated as  
24 Confidential used **in connection with any dispositive motion**, at trial, and in all post-  
25 trial proceedings shall become public unless a separate court order is obtained upon  
26 noticed motion and sufficient cause shown. In that respect, nothing herein shall  
27 prejudice any parties' rights to object to the introduction of any Confidential  
28

1 Information into evidence, on grounds, including, but not limited to, relevance and  
2 privilege.

3 **Miscellaneous Provisions**

4 19. It is expressly understood by and between the parties that in producing  
5 Confidential Information in this litigation, the parties are relying upon the terms and  
6 conditions of the Protective Order.

7 20. By written agreement of the Parties, or upon motion and order of the  
8 Court, the terms of this Protective Order may be amended or modified. This  
9 Protective Order shall continue in force until amended or superseded by express order  
10 of the Court, and shall survive any final judgment or settlement in this case.

11 Dated: May 6, 2011

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15 MARGARET A. NAGLE  
16 UNITED STATES MAGISTRATE JUDGE  
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1 **EXHIBIT A**

2 **Protective Order Acknowledgment and Non-Disclosure Agreement**

3 The undersigned hereby acknowledges and agrees to the following:

4 I have had the opportunity to review the Protective Order in *Clarke v. First*  
5 *Transit, Inc.*, currently pending in the U.S. District Court for the Central District of  
6 California, Case No. CV 07-06476 GAF (MANx). I certify that I am an appropriate  
7 person for receipt of Confidential Information under the Protective Order. I  
8 understand and agree to be bound by the terms of the Protective Order and will not  
9 disclose any of the Confidential Information provided to me to any third person,  
10 except as allowed in the Protective Order. I understand and agree that my use of any  
11 Confidential Information shall only be for purposes relating to the above-titled  
12 litigation including the prosecution, defense, including, but not limited to, appeals and  
13 writs relating thereto, discovery, and/or mediation or settlement of this action in  
14 accordance with the provisions of the Protective Order.

15 I also agree that upon being informed of the termination or settlement of this  
16 action, I will surrender all Confidential Information provided to me to the counsel that  
17 provided it to me so that it may be returned to the party that it belongs to in  
18 accordance with the terms of the Protective Order. By signing this Non-Disclosure  
19 Agreement, I hereby consent to the jurisdiction of the U.S. District Court for the  
20 Central District of California for purposes of enforcing the terms of this Protective  
21 Order and Non-Disclosure Agreement.

22  
23 Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]