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9 **CRUISE LOGISTICS, LLC**
10 **NATHAN NICHOLSON**

NOTE CHANGES MADE BY THE COURT.

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **TRANSQUIK, INC.**

14 Plaintiff,

15 vs.

16 **FREIGHTCO LOGISTICS, a unknown**
17 **business entity CRUISE LOGISTICS,**
18 **LLC; NATHAN NICHOLSON, an**
19 **individual; and Does 1-50, inclusive**

20 Defendants.

Case No. 2:09-cv-04769-JHC^N (PLAx)
Judge: Jacqueline Hong-Ngoc Nguyen

[PROPOSED] STIPULATED
PROTECTIVE ORDER

1 Plaintiff Transquik, Inc. (“Transquick”) and Defendants Nathan Nicholson
2 and Cruise Logistics, LLC d/b/a Freightco Logistics (collectively, “FreightCo”)
3 have stipulated to this [Proposed] Stipulated Protective Order (“Protective
4 Order”) by their undersigned counsel.

5 The parties represent that pretrial discovery in this case will necessarily
6 focus on matters that are confidential and proprietary to the ongoing business of
7 the parties or of third parties, and may require the production of material
8 describing the parties’ respective lists of actual and potential customers, and
9 material non-public financial information and projections.

10 Such information falls within recognized categories of information which
11 may be protected from public disclosure through confidentiality designations
12 under a protective order. *See* Fed. R. Civ. P. 26(c)(7) (allowing protection of
13 “trade secret or other confidential research, development or commercial
14 information”).

15 The parties further represent that public disclosure of such material poses a
16 substantial risk of great economic harm in that discovery of a party’s trade
17 secrets or other proprietary commercial information would put the party at a
18 competitive disadvantage and would be a windfall to the discovering (competing)
19 party.

20 For the foregoing reasons, good cause exists for entry of this Order to
21 facilitate pretrial disclosure while assuring the safety of these sensitive
22 disclosures. *See* Fed. R. Civ. P. 26(c).

23 This Order shall apply to pretrial out-of-court discovery and pretrial filings
24 with the Court.

25 IT IS HEREBY ORDERED that the following provisions shall govern the
26 conduct of pretrial proceedings in this action:
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1 **I. INTRODUCTION AND SCOPE**

2 This Protective Order shall govern any designated information produced in
3 this action, including all designated deposition testimony, interrogatory answers,
4 documents and other discovery materials, whether produced informally or in
5 response to interrogatories, requests for admissions, requests for production of
6 documents or other formal method of discovery. This Protective Order shall also
7 govern any designated information produced in this action pursuant to required
8 disclosures under the Federal Rules of Civil Procedure and the Local Rules of the
9 Central District of California, and any supplementary disclosures thereto. This
10 Protective Order shall apply to the categories of information listed in this
11 paragraph in the present action only.

12 **II. DESIGNATION**

13 A. Each party shall have the right to designate as confidential and
14 subject to this Protective Order any information, document or portion of any
15 document produced by it in this litigation which contains non-public, proprietary,
16 or confidential information, whether personal or business related, that constitutes,
17 reflects, or concerns trade secrets—as defined by Cal. Civ. Code § 3426.1(d),
18 know how or other confidential, technical, business or financial information
19 (hereafter “Classified Material”). This designation shall be made by stamping
20 each page of the document containing confidential information with the legend
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as the case may be
22 pursuant to paragraphs **II.B.** and **II.C.** below, prior to its production or, if
23 inadvertently produced without such legend, by promptly furnishing written
24 notice to the receiving party that the information or document constitutes
25 CONFIDENTIAL or HIGHLY CONFIDENTIAL under this Protective Order.
26 With respect to all materials provided for inspection by a party's counsel,
27 designation by stamping or labeling as CONFIDENTIAL or HIGHLY
28 CONFIDENTIAL need not be made until copies of the materials are requested

1 after inspection and selection by counsel. Making documents and things
2 available for inspection shall not constitute a waiver of any claim of
3 confidentiality, and all materials provided for inspection by the party's counsel
4 shall be treated as though designated as HIGHLY CONFIDENTIAL at the time
5 of the inspection.

6 B. "HIGHLY CONFIDENTIAL" information shall be Classified
7 Material of the most sensitive nature, which the designating party in good faith
8 believes to be unknown to the party receiving such information and which, if
9 disclosed to the receiving party, competitors, persons of expertise in the area or
10 others, would reveal significant confidential, technical, business or financial
11 information or advantages of the designating party. Classified Material
12 designated as HIGHLY CONFIDENTIAL information will be produced on an
13 "outside counsels' eyes only" basis, and may include sales and financial
14 information, information regarding pricing and royalty and customer
15 identification.

16 C. "CONFIDENTIAL" information shall encompass all Classified
17 Material that is not HIGHLY CONFIDENTIAL, but would nonetheless cause a
18 substantial risk of harm or prejudice to the producing party if disclosed to the
19 public. Matter designated as CONFIDENTIAL shall mean sensitive personal or
20 business information, which matter is not generally known to the public, which
21 would not normally be revealed to another, or which would be revealed to
22 another only in confidence.

23 **III. LIMIT ON USE AND DISCLOSURE OF DESIGNATED**
24 **INFORMATION**

25 No party or other person bound by the terms of this Protective Order shall
26 disclose, use or release to any person not qualified under this Protective Order
27 any information or document governed by this Protective Order for any purpose,
28 or to any person qualified under this Protective Order for any purpose other than

1 the prosecution or defense of this action, unless ordered by a judge. In addition,
2 CONFIDENTIAL or HIGHLY CONFIDENTIAL documents and information
3 designated by any party hereunder shall be maintained so as to preclude access
4 by persons who are not qualified to have access. It is, however, understood that
5 counsel for a party may give advice and opinions to his or her client based on his
6 or her evaluation of information designated as CONFIDENTIAL or HIGHLY
7 CONFIDENTIAL, provided that such rendering of advice and opinions shall not
8 reveal the content of such information except by prior written agreement with
9 opposing counsel. The attorneys of record for the parties and other persons
10 receiving information governed by this Protective Order shall exercise reasonable
11 care to insure that the information and documents governed by this Protective
12 Order are (a) used only for the purposes specified herein, and (b) disclosed only
13 to authorized persons.

14 **IV. DISCLOSURE OF CLASSIFIED MATERIAL**

15 Except as otherwise provided herein or by further written stipulation of the
16 parties or by further Order of the Court, documents or information containing
17 confidential or proprietary information of a party may be designated by that party
18 as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

19 A. Documents or information designated as HIGHLY
20 CONFIDENTIAL shall only be disclosed by the recipient thereof, on a need-to-
21 know basis, to (i) outside counsel of record for the parties and their staff working
22 on this litigation; (ii) the Court, Court personnel and Court reporters; (iii)
23 independent consultant experts, and their staff, who are expressly retained by a
24 party or its outside counsel of record for purposes of assisting outside counsel
25 with respect to this litigation pursuant to paragraph VI below, who are not
26 employees of the parties and who first agree to be bound by this Protective Order
27 pursuant to the provisions of paragraph VII below; and (iv) independent graphics
28 or design services retained by the parties or counsel for purposes of this litigation

1 who first agree to be bound by this Protective Order pursuant to the provisions of
2 paragraph VII below. No documents or information designated as HIGHLY
3 CONFIDENTIAL shall be disclosed to any person other than the foregoing
4 persons except by further written stipulation of the parties or by further Order of
5 the Court.

6 B. Documents or information designated as CONFIDENTIAL shall
7 only be disclosed by the recipient thereof, on a need-to-know basis, to (i) the
8 persons identified in paragraph IV.A., above, pursuant to the provisions of that
9 paragraph and paragraph 6 below.

10 V. REDACTION

11 Counsel for a party producing documents may mask ("redact") material
12 deemed exempt from discovery because of the attorney-client privilege or work
13 product immunity afforded by Fed. R. Civ. P. 26(b), and may thus produce
14 documents for inspection either in a masked or unmasked form. However, any
15 document from which material is masked must identify in the masked area that
16 masking or redaction has occurred. The reason for any such masking must be
17 stated either on the document itself or on a privilege log which accompanies the
18 produced documents. The redacting party shall bear the burden of proof with
19 respect to the propriety of the redaction.
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2 **VI. IDENTIFICATION OF EXPERTS**

3 If any party desires to give, show, make available or communicate
4 documents or information designated by another party as CONFIDENTIAL or
5 HIGHLY CONFIDENTIAL to any expert consultant pursuant to paragraph IV
6 above, it must first identify in writing the expert consultant to whom it intends to
7 give or disclose such documents or information to the attorneys for all other
8 parties, who shall have ten (10) business days from receipt of such notice to
9 object to disclosure to the expert so identified, during which time no disclosure
10 shall be made to the expert. Such identification shall include, at least, the full
11 name and professional address and/or affiliation of the proposed expert; an up-to-
12 date curriculum vitae of the expert identifying at least all other present and prior
13 employments or consultancies of the expert for the last four (4) years; and a list
14 of the actions in which the expert has testified during the last four (4) years. In
15 the event such proposed expert is prohibited due to confidentiality obligations to
16 a third party from disclosing a present or prior employment or consultancy, the
17 expert shall so state and shall in that case disclose such information as the expert
18 is permitted to provide regarding the nature of the consultancy (such as, *e.g.*, the
19 industry and technology involved in the employment or consultancy; whether the
20 employment or consultancy was for a competitor of the party; and like
21 information) to enable, to the extent possible, the other party to determine
22 whether or not to object to the expert. The parties agree that the above-listed
23 information shall constitute sufficient information from which to approve
24 disclosure to the expert.

25 If a party objects to the expert, such party must object in writing and
26 provide the basis for the objection within ten (10) business days after receipt of
27 the designation of the expert as set forth above. If a party objects, the parties
28 shall, within ten (10) business days from the date of the written notice of
objection, confer and attempt to resolve the dispute informally. At that

1 conference, the objecting party shall inform the other party of its reasons for
2 objecting to the designated person. If the objections cannot be resolved or the
3 conference does not take place, then either party may move for an Order of Court
4 allowing or denying the disclosure. ^{pursuant to Local Rule 37. [Signature]} In the event objections are made and not
5 resolved informally, disclosure of CONFIDENTIAL or HIGHLY
6 CONFIDENTIAL documents and information to the expert shall not be made
7 except by Order of the Court. The party to whom an objection has been made
8 may (but is not required to) move for relief from the Court. The party objecting
9 to the disclosure shall bear the burden of proving that the disclosure is
10 inappropriate.

11 If no response to an expert consultant identification is received from a
12 party within the ten (10) business day expert evaluation period, then that party's
13 approval of the expert consultant's access to confidential information will be
14 presumed but shall not preclude the producing party from objecting to continued
15 access if the producing party or its counsel learns of facts suggesting a basis for
16 objection.

17 **VII. AGREEMENT OF CONFIDENTIALITY**

18 Except as otherwise provided herein, in no event shall any material
19 designated CONFIDENTIAL or HIGHLY CONFIDENTIAL be disclosed to any
20 person, other than the Court, court personnel and court reporters, or counsel of
21 record of the parties and their authorized staffs, until such person has executed a
22 written Confidentiality Undertaking acknowledging and agreeing to be bound by
23 the terms of this Protective Order in the form set forth in Exhibit A hereto.
24 Counsel shall retain all executed versions of Exhibit A until the end of the
25 litigation and shall, upon request at that time, provide copies thereof to counsel
26 for the opposing party.

27 **VIII. RELATED DOCUMENTS**

28 Documents and information designated as CONFIDENTIAL or HIGHLY

1 CONFIDENTIAL shall include (a) all copies, extracts and complete or partial
2 summaries prepared from such documents or information; (b) portions of
3 deposition transcripts and exhibits thereto which contain or reflect the content of
4 any such documents, copies, extracts, or summaries; (c) portions of briefs,
5 memoranda or any other writing filed with the Court and exhibits thereto which
6 contain or reflect the content of any such documents, copies, extracts, or
7 summaries; (d) deposition testimony designated in accordance with paragraph IX
8 below; and (e) testimony taken at a hearing or other proceeding that is designated
9 in accordance with paragraph XI below.

10 **IX. DESIGNATION OF DEPOSITION TRANSCRIPTS**

11 Deposition transcripts, or portions thereof, may be designated as subject to
12 this Protective Order either (a) at the time of such deposition, in which case the
13 transcript of the designated testimony shall be bound in a separate volume and
14 marked by the reporter as CONFIDENTIAL or HIGHLY CONFIDENTIAL as
15 the case may be; or (b) within thirty (30) days following receipt of the deposition
16 transcript by providing written notice to all counsel of record, in which case all
17 counsel receiving such notice shall mark the copies or portions of the designated
18 transcript in their possession, custody or control as directed by the designating
19 party. All deposition transcripts not previously designated shall be deemed to be,
20 and shall be treated as, HIGHLY CONFIDENTIAL for a period of thirty (30)
21 days after receipt of the transcript and, during that thirty (30) day period, the
22 transcript shall not be disclosed by a non-designating party to persons other than
23 those persons named or approved according to paragraph IV herein to review
24 documents or materials designated HIGHLY CONFIDENTIAL on behalf of that
25 non-designating party.

26 The designating party shall have the right to exclude from a deposition,
27 before the taking of testimony which the designating party designates as subject
28 to this Stipulation and Order, all persons other than those who: (a) are qualified

1 to receive HIGHLY CONFIDENTIAL information pursuant to paragraph IV;
2 and (b) have, if required, executed a Confidentiality Undertaking in the form of
3 Exhibit A.

4 **X. DESIGNATION OF DOCUMENT PRODUCTION**

5 If a producing party elects to produce documents and things for inspection
6 at its premises rather than producing documents through its counsel, that party
7 need not label the documents and things in advance of that inspection. For
8 purposes of the inspection, all documents within the produced files will be
9 considered as having been preliminarily marked HIGHLY CONFIDENTIAL.
10 During the inspection at the producing party's premises, the inspecting party
11 shall select specific documents or groups of documents for copying by a
12 professional copy service at the inspecting party's own expense. After receiving
13 the copies of the selected documents from the copy service, the producing party
14 shall have fifteen (15) calendar days to review and mark the copies as
15 CONFIDENTIAL or HIGHLY CONFIDENTIAL, as appropriate, and thereafter
16 produce those copies to the inspecting party within the above-stated fifteen (15)
17 day period. All documents selected for production by the inspecting party must
18 be produced by the producing party within the fifteen (15) day review period.
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20 **XI. DISCLOSURE TO AUTHOR OR RECIPIENT**

21 Notwithstanding any other provisions of this Protective Order, nothing
22 herein shall prohibit counsel for a party from disclosing a document, whether or
23 not designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL, to any
24 person identified on the document as an author, addressee, or carbon copy
25 recipient of such document, or someone reasonably shown by evidence to have
26 had authorized access to such document; and regardless of such designation
27 pursuant to this Protective Order, if a document or testimony makes reference to
28 the actual or alleged conduct or statements of a person who is a potential witness,

1 counsel may discuss such conduct or statements with such witness without
2 revealing any portion of the document or testimony other than that which
3 specifically refers to such conduct or statement, and such discussion shall not
4 constitute disclosure in violation of this Protective Order.

5 **XII. DISCLOSURE TO JURY RESEARCH PARTICIPANTS**

6 Notwithstanding any other provision herein, a party may disclose another
7 party's CONFIDENTIAL or HIGHLY CONFIDENTIAL information to
8 independent, retained jury research participants provided those jury research
9 participants first sign Exhibit B attached hereto agreeing to maintain in
10 confidence and to not use the other party's CONFIDENTIAL or HIGHLY
11 CONFIDENTIAL information. Jury research participants are not permitted to
12 keep the other party's CONFIDENTIAL or HIGHLY CONFIDENTIAL
13 information.

14 **XIII. DESIGNATION OF DOCUMENTS UNDER SEAL**

15 Any information or documents designated as CONFIDENTIAL or
16 HIGHLY CONFIDENTIAL, if filed with the Court, shall be filed in accordance
17 with Local Civil Rule 79-5.1 and kept by the Court pursuant to Local Rule 79-
18 5.2. *The application to file under seal must demonstrate good cause for the*
19 *under seal*
20 *filing.*
21 *PLA*
22 The party filing any paper which reflects, contains or includes any
23 information or document subject to this Protective Order shall file such paper in a
24 sealed envelope, or other appropriately sealed container, which indicates the title
25 of the action, the party filing the materials, the nature of the materials filed, the
26 legend CONFIDENTIAL or HIGHLY CONFIDENTIAL as the case may be, and
27 a statement substantially in the following form:

28 **SUBJECT TO PROTECTIVE ORDER**

This envelope contains documents subject to a Protective Order of the Court. It should not be opened nor its contents disclosed, revealed or made public except by Order of the Court or written agreement of the parties.

XIV. CONFIDENTIALITY OF PARTY'S OWN DOCUMENTS

1 No person may disclose, in public or private, any designated information
2 or documents of another party except as provided for in this Protective Order, but
3 nothing herein shall affect the right of the designating party to disclose to its
4 officers, directors, employees, consultants or experts, or to any other person,
5 information or documents designated by it as CONFIDENTIAL or HIGHLY
6 CONFIDENTIAL. Such disclosure shall not waive the protections of this
7 Protective Order and shall not entitle the other party or its attorneys to disclose
8 such information or documents in violation of this Protective Order.

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10 **XV. PREPARATION**

11 Any party may mark any material designated hereunder as
12 CONFIDENTIAL or HIGHLY CONFIDENTIAL as an exhibit to a deposition
13 and examine any witness thereon qualified under the terms of this Protective
14 Order to have access to such designated material, provided (a) the qualified
15 witness previously has executed or stated under oath to agree to be bound by this
16 Protective Order in the form set forth in Exhibit A hereto, and (b) the exhibit and
17 related transcript pages receive the same type of confidentiality designation as
18 the original document.

19 **XVI. OTHER PROTECTIONS: CHALLENGE TO
CONFIDENTIALITY DESIGNATION**

20 A. Any disputes relating to this Protective Order, such as those
21 regarding the designation of confidential documents, must be resolved pursuant
22 to L.R. 37.

23 B. This Protective Order shall not preclude any party from seeking and
24 obtaining, on an appropriate showing, such additional protection with respect to
25 the confidentiality of documents or other discovery materials as that party may
26 consider appropriate. Nor shall any party be precluded from (a) claiming that any
27 matter designated hereunder is not entitled to the protections of this Protective
28 Order, (b) applying to the Court for an Order permitting the disclosure or use of

1 information or documents otherwise prohibited by this Protective Order, or (c)
2 applying for a further Order modifying this Protective Order in any respect. No
3 party shall be obligated to challenge the propriety of any confidentiality
4 designation, and failure to do so shall not preclude a subsequent challenge to the
5 propriety of such designation.

6 C. On any motion challenging the designation of any document or
7 other record or information as CONFIDENTIAL or HIGHLY CONFIDENTIAL,
8 the burden of justifying the designation shall lie with the designating party. That
9 is, the party seeking to maintain the confidentiality of the information shall bear
10 the burden of showing that specific prejudice or harm will result if no protection
11 is granted.

12 D. If a party seeks declassification or removal of particular items
13 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL from this
14 Protective Order on the ground that such confidentiality is not necessary to
15 protect the interests of the party furnishing the document, information or other
16 thing, the following procedure shall be utilized:

17 1. The party seeking such declassification or removal shall give
18 counsel for the other party written notice thereof in the form of a request for a
19 pre-filing conference pursuant to L.R. 37-1. Such request for pre-filing
20 conference shall comply with the requirements of L.R. 37-1, and shall include
21 identification of the document, information or other thing as to which such
22 removal is sought and the reasons for the request;

23 2. Counsel for the producing party shall confer with counsel for
24 the party seeking declassification within ten (10) calendar days. During such
25 conference, counsel for the producing party shall articulate the basis for the
26 producing party's designation with sufficient particularity to enable the
27 challenging party to move the Court for permission to disclose the material
28 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

1 3. If, after conferring, the parties cannot reach agreement
2 concerning the matter within five (5) calendar days after the conference pursuant
3 to sub-section 2, above, then the parties shall prepare a joint stipulation pursuant
4 to L.R. 37-2 which stipulation shall be filed and served with the notice of motion
5 seeking declassification of the document(s) at issue.

6 **XVII. PRIOR OR PUBLIC KNOWLEDGE**

7 This Protective Order shall not apply to information that, prior to
8 disclosure, is public knowledge other than through improper or unauthorized
9 disclosure, and the restrictions contained in this Protective Order shall not apply
10 to information that is, or after disclosure becomes, public knowledge other than
11 through an inadvertent act or omission of the party to whom such disclosure is
12 made, or that is legitimately and independently acquired from a source not
13 subject to this Protective Order, or that is legitimately and independently
14 developed or invented by the party to whom disclosure is made as demonstrated
15 by written proof.

16 **XVIII. LIMITATION OF PROTECTIVE ORDER**

17 This Protective Order is entered for the sole purpose of facilitating the
18 exchange of documents and information between the parties to this action
19 without involving the Court unnecessarily in the process. Nothing in this
20 Protective Order, nor the production of any information or document under the
21 terms of this Protective Order, nor any proceedings pursuant to this Protective
22 Order, shall be deemed to have the effect of an admission by either party, or of
23 altering the confidentiality or nonconfidentiality of any such document or
24 information, or altering any existing obligation of any party or the absence
25 thereof.

26 This Protective Order is not intended to fully address discovery objections
27 to produce, answer, or respond to the grounds of attorney-client privilege or work
28 product immunity, nor to preclude either party from seeking further relief or

1 other protective orders from the Court as may be appropriate under the Federal
2 Rules of Civil Procedure or the Local Rules of this Court.

3 **XIX. INADVERTENT DISCLOSURE OF WORK PRODUCT OR**
4 **PRIVILEGED INFORMATION; PROCEDURE AND WAIVER**

5 Inadvertent production of documents subject to work product immunity or
6 the attorney-client privilege shall not constitute a waiver of the immunity or
7 privilege, provided that the producing party shall notify the receiving party in
8 writing of such inadvertent production promptly after the producing party learns
9 of such inadvertent production. If prompt notification is made, such
10 inadvertently produced document and all copies thereof shall be returned to the
11 producing party or destroyed upon request, and all notes containing or
12 concerning such inadvertently produced documents or information contained
13 therein shall be destroyed, within five (5) business days of receiving such written
14 notice. No use shall be made of such documents during deposition or at trial, nor
15 shall they be shown to anyone who was not given access to them prior to the
16 request to return or destroy such documents. The party having returned such
17 inadvertently produced material may thereafter seek production of any such
18 material in accordance with the Federal Rules of Civil Procedure by moving the
19 Court, provided that the party seeking discovery may not assert waiver as a basis
20 for production based solely on the inadvertent production.

21 **XX. NON-PARTY MATERIAL**

22 Non-parties may invoke all the provisions of this Protective Order which
23 are available to the parties. This provision does not abridge a non-party's right to
24 seek to quash any subpoena served on it, or to seek to protect information sought
25 by a party, either on the non-party's own motion or on a motion brought on its
26 behalf by an objecting party. The party seeking production from a non-party
27 who may possess CONFIDENTIAL or HIGHLY CONFIDENTIAL material of
28 the other party shall offer to provide a copy of this Protective Order to that non-

1 party prior to any production from that person or entity. The party seeking
2 production shall also take reasonable steps to inform that non-party of its rights
3 under this Protective Order and its ability to designate any material it produces as
4 CONFIDENTIAL or HIGHLY CONFIDENTIAL. In addition, the party shall
5 treat the CONFIDENTIAL or HIGHLY CONFIDENTIAL material of non-
6 parties in accordance with the terms of this Protective Order.

7 **XXI. RETURN OF DESIGNATED INFORMATION**

8 A. Prior to trial of the action, counsel for the parties shall attempt to
9 reach agreement on the handling of Confidential Information at trial, and shall
10 submit such agreement or proposals to the Court for consideration.

11 B. Within sixty (60) days of final termination of this action, unless
12 otherwise agreed to in writing by an attorney of record for the designating party,
13 each party shall assemble all material designated by the producing party as
14 CONFIDENTIAL or HIGHLY CONFIDENTIAL and that has not become
15 known to the public, including all copies, extracts and summaries thereof, and
16 shall return such material to the party from whom the material was obtained, or at
17 its option shall destroy such material *provided* that in such event such destruction
18 shall be certified in writing to counsel for the party from whom the designated
19 material was obtained. Notwithstanding the foregoing, outside counsel of record
20 may keep one (1) set of pleadings, correspondence, court filings, discovery
21 requests, discovery responses (excluding document productions), deposition
22 transcripts and exhibits thereto, trial exhibits, trial transcripts, and a copy of the
23 record on appeal in an archive, subject to the continuing obligations under this
24 Protective Order. Outside counsel may also retain documents or information
25 containing extracts or summaries of any information designated by the producing
26 party as CONFIDENTIAL or HIGHLY CONFIDENTIAL if such documents or
27 information are stored in outside counsels' electronic document systems and/or
28 servers, subject to the parties' continuing obligations under this Protective

1 Order. To the extent that electronic copies of materials designated as
2 CONFIDENTIAL or HIGHLY CONFIDENTIAL may be contained on backup
3 tapes that are created and maintained solely for the purpose of disaster recovery,
4 and which are periodically overwritten, such electronic copies shall not be
5 subject to the provisions of this paragraph.

6 **XXII. WRONGFUL DISCLOSURE**

7 If CONFIDENTIAL or HIGHLY CONFIDENTIAL material is disclosed
8 to anyone other than in a manner authorized by this Protective Order, the party
9 responsible for such disclosure must (a) immediately bring all pertinent facts
10 relating to such disclosure to the attention of the party that produced the
11 CONFIDENTIAL or HIGHLY CONFIDENTIAL material; (2) retrieve such
12 CONFIDENTIAL or HIGHLY CONFIDENTIAL material, or, where the
13 information is not retrievable, certify that it has been lost or destroyed and that no
14 copies are within the possession, custody, or control of unauthorized recipients of
15 the information, documents, or materials; and (3) prevent further disclosure.

16 **XXIII. GOOD CAUSE**

17 As stated above, good cause exists for this Court to enter this Protective
18 Order, because it allows for both parties to disclose documents in the litigation of
19 this matter without suffering from an economic and business detriment that
20 would result from the disclosure of CONFIDENTIAL or HIGHLY
21 CONFIDENTIAL material. The disclosure of any CONFIDENTIAL or
22 HIGHLY CONFIDENTIAL material would harm the parties financially and
23 result in lost business opportunities because the parties' competitors would gain
24 an unfair advantage over the parties if they learn the parties' CONFIDENTIAL
25 or HIGHLY CONFIDENTIAL material. This material should be protected
26 because it reveals the parties' current financial status, business strategy, business
27 structure, and future opportunities and efforts.

28 **XXV. WAIVER OR TERMINATION OF ORDER**

1 No part of the restrictions imposed by this Protective Order may be waived
2 or terminated, except by the written stipulation executed by counsel of record for
3 each designating party, or by an Order of the Court for good cause shown.

4 **XXIV. PARAGRAPH CAPTIONS**

5 The title captions for each paragraph of this Protective Order are for
6 convenience only and are not intended to affect or alter the text of the paragraphs
7 or the substance of this Protective Order.
8

9
10 Respectfully submitted,

11
12 Dated: 12/29/09

13 By: Kristopher P. Badame
BADAME & ASSOCIATES, APC

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Dated: 12/29/09

By: S. Christopher Winter
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Attorneys for Defendants
CRUISE LOGISTICS, LLC
NATHAN NICHOLSON

IT IS SO ORDERED:

Date: 1/4/10



Paul L. Abrams
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A
NON-DISCLOSURE AGREEMENT

I, _____, do solemnly swear and agree that I have reviewed the terms of the Stipulated Protective Order entered in Case No. 2:09-cv-04769-JHN (PLAx), pending in the United States District Court, Central District of California, a copy of which has been provided to me.

I hereby agree to comply with and be bound by the terms and conditions of the Order unless and until modified by further Order of this Court. Further, to the extent I receive CONFIDENTIAL material or HIGHLY CONFIDENTIAL material in connection with this litigation, including the information contained therein, I agree that I will hold that material and information in confidence in accordance with the terms of the Order.

I hereby agree to only use CONFIDENTIAL material or HIGHLY CONFIDENTIAL material for the purpose of the prosecution or defense of this action, and for no other purpose.

I understand that I am to retain all copies of the materials that I receive that have been designated as CONFIDENTIAL material or HIGHLY CONFIDENTIAL material in a container, cabinet, drawer, room, or other safe place in a manner consistent with the Order, and that all copies are to remain in my custody until I have completed my assigned or legal duties.

I will return all confidential documents and things that come into my possession, or that I have prepared relating to such documents and things, to counsel for the party by whom I am employed or retained. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me

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from any of the continuing obligations imposed on me by the Order. I hereby
consent to the jurisdiction of this Court for purposes of enforcing this Order.

Dated: _____ Signed: _____

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EXHIBIT B
NON-DISCLOSURE AGREEMENT

I, _____, do solemnly swear and agree that:

1. I understand that the focus group study in which I have been requested to participate will result in the receipt by me of information considered by third parties to be confidential and proprietary.

2. In consideration of my selection to participate in the focus group study and my receipt of any remuneration for my participation in that study, I agree to keep all information disclosed to me during the course of such study as confidential, and will not disclose such information to any other person.

Signed: _____
Dated: _____
Current Address: _____

