

1 James H. Hanson
 2 jhanson@scopelitis.com
 3 Andrew J. Butcher
 4 abutcher@scopelitis.com
 5 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
 10 West Market Street, Suite 1500
 Indianapolis, IN 46204
 Telephone: (317) 637-1777
 Telefax: (317) 687-2414

6 Attorneys for Defendant,
 Trimac Transportation Services (Western), Inc.

7
 8 Additional Counsel on Attached Page

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 GERALD AMADOR AND
 12 SALVADOR CARILLO, on behalf of
 himself and all others similarly situated,

13 Plaintiffs,

14 vs.

15 LOGISTICS EXPRESS, INC.,
 16 TRIMAC TRANSPORTATION
 SERVICES (WESTERN), INC.
 17 and DOES 1 through 100, inclusive,

18 Defendants.

Case No. CV10-4112-GHK(JCx)

Consolidated with:
 Case No. CV10-4280-GHK(JCx)

Assigned to the Honorable George
 H. King
 Courtroom 2

PROTECTIVE ORDER

[CHANGES MADE BY COURT
 TO PARAGRAPHS 3, 5.2b AND
 6.3]

19 _____
 20 MIGUEL LARA, on behalf of himself
 and all others similarly situated,

21 Plaintiff,

22 vs.

23 TRIMAC TRANSPORTATION
 24 SERVICES (WESTERN) INC., a
 Delaware Corporation, and DOES 1
 25 through 100, inclusive,

26 Defendants.

1 Kathleen C. Jeffries (SBN 110362)
2 kjeffries@scopelitis.com
3 Christopher C. McNatt, Jr. (SBN 174559)
4 cmcnatt@scopelitis.com
5 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP
6 2 North Lake Avenue, Suite 460
7 Pasadena, CA 91101
8 Telephone: (626) 795-4700
9 Telefax: (626) 795-4790

10 Attorneys for Defendant,
11 Trimac Transportation Services (Western), Inc.

12 Melissa M. Harnett (State Bar No. 164309)
13 mharnett@wcclaw.com
14 Gregory Scarlett (State Bar No. 131486)
15 gscarlett@wcclaw.com
16 Jesse B. Levin (State Bar No. 268047)
17 jlevin@wcclaw.com
18 WASSERMAN, COMDEN, CASSELMAN & ESENSTEN, L.L.P.
19 5567 Reseda Boulevard, Suite 330
20 Tarzana, California 91357-7033
21 Telephone: (818) 705-6800 / (310) 872-0995
22 Facsimile: (818) 345-0162

23 Attorneys for Plaintiffs GERALD AMADOR and SALVADOR CARILLO

24 R. Duane Westrup (State Bar No. 58610)
25 jveloff@wkalaw.com
26 Phillip R. Poliner (State Bar No. 156145)
27 ppoliner@wkalaw.com
28 Christine C. Choi (State Bar No. 205656)
29 cchoi@wkalaw.com
30 WESTRUP KLINK, LLP
31 444 West Ocean Boulevard, Suite 1614
32 Long Beach, California 90802
33 Telephone: (562) 432-2551
34 Facsimile: (562) 435-4856

35 Attorneys for Plaintiff MIGUEL LARA

36 **Purposes and Limitations.** Disclosure and discovery activity in this action
37 are likely to involve production of confidential, proprietary, or private information
38 for which special protection from public disclosure and from use for any purpose
39 other than prosecuting this litigation would be warranted. Accordingly, the parties
40 hereby stipulate to and petition the Court to enter the following Stipulated
41 Protective Order. The parties acknowledge that this Order does not confer blanket

1 protections on all disclosures or responses to discovery and that protection it
2 affords extends only to the limited information or items that are entitled under the
3 applicable legal principles to treatment as confidential. The parties further
4 acknowledge, as set forth in Section 10 below, that this Stipulated Protective Order
5 creates no entitlement to file confidential information under seal; Civil Local Rule
6 79-5.1 sets forth the procedures that must be followed when a party seeks
7 permission from the Court to file materials under seal.

8 **1. Definitions.**

9 2.1 Party: Any party to this action, including all of its officers,
10 directors, employees, consultants, retained experts and outside counsel (and their
11 support staff).

12 2.2 Disclosure or Discovery Material: All items or information,
13 regardless of the medium or manner generated, stored or maintained (including,
14 among other things, testimony, transcripts or tangible things) that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 2.3 “Confidential” Information or Items: Information (regardless of
17 how generated, stored or maintained) or tangible things that qualify for protection
18 under standards developed under Fed.R.Civ.P. 26(c).

19 2.4 “Highly Confidential–Attorney Eyes Only” Information or Items:
20 Extremely sensitive “Confidential Information or Items” whose disclosure to another
21 party or non-party would create a substantial risk of serious injury that could not be
22 avoided by less restrictive means.

23 2.5 Receiving Party: A party that receives disclosure or discovery
24 material from a producing party.

25 2.6 Producing Party: A party or non-party that produces disclosure or
26 discovery material in this action.

1 2.7 Designating Party: A party or non-party that designates
2 information or items that it produces or in responses to discovery as “Confidential” or
3 “Highly Confidential – Attorney Eyes Only.”

4 2.8 Protected Material: Any disclosure or discovery material that is
5 designated as “Confidential” or as “Highly Confidential – Attorney Eyes Only.”

6 2.9 Outside Counsel: Attorneys who are not employees of a party but
7 who are retained to represent or advise a party in this action.

8 2.10 House Counsel: Attorneys who are employees of a party.

9 2.11 Counsel (without qualifier): Outside counsel and house counsel
10 (as well as their support staffs).

11 2.12 Expert: A person with specialized knowledge or experience in a
12 matter pertinent to the litigation who has been retained by a party or its counsel to
13 serve as an expert witness or as a consultant in this action and who is not a past or a
14 current employee of a party or of a competitor of a party and who, at the time of
15 retention, is not anticipated to become an employee of a party or a competitor of a
16 party. This definition includes a professional jury or trial consultant retained in
17 connection with this litigation.

18 2.13 Professional Vendors: Persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations; organizing, storing, retrieving data in any form or medium, etc.) and
21 their employees and subcontractors.

22 **3. Scope**. The protections conferred by this Order cover not only protected
23 material (as defined above), but also any information copied or extracted therefrom,
24 as well as all copies, excerpts, summaries or compilations thereof, plus testimony,
25 conversations or presentations by parties or counsel other than in an open court
26 proceeding (as court proceedings are presumptively public) that might reveal
27 protected material. Nothing in order precludes a party or non-party from requesting
28

1 that the court presiding over a particular proceeding in open court apply this
2 Protective Order to such particular proceeding or appropriate portions thereof.

3
4 **4. Duration.** Even after the termination of this litigation, the
5 confidentiality obligations imposed by this Order shall remain in effect until a
6 designating party agrees otherwise in writing or a court order otherwise directs.

7 **5. Designating Protected Material.**

8 5.1 Exercise of Restraint and Care in Designating Material for
9 Protection. Each party or non-party that designates information or items for
10 protection under this Order must take care to limit any such designation to a specific
11 material that qualifies under the appropriate standards. A designating party must take
12 care to designate for protection only those parts of material, documents, items or oral
13 or written communications that qualify – so that other portions of the material,
14 documents, items or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this Order. Mass, indiscriminate or routinized
16 designations are prohibited. Designations that are shown to be clearly unjustified, or
17 that have been made for an improper purpose (e.g., to unnecessarily encumber or
18 retard the case development process or to impose unnecessary expenses and burdens
19 on other parties), expose the designating party to sanctions. If it comes to the
20 attention of a party or a non-party that information or items that it designated for
21 protection do not qualify for protection at all or do not qualify for the level of
22 protection initially asserted, that party or non-party must promptly notify all other
23 parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise
25 provided in this Order (see, e.g., second paragraph of Section 5.2(a) below) or as
26 otherwise stipulated or ordered, material that qualifies for protection under this Order
27 must be clearly so designated before the material is disclosed or produced.
28 Designation in conformity with this Order requires the following:

1 a. For information in documentary form (apart from transcripts of
2 depositions or other pretrial or trial proceedings), the producing
3 party should affix the legend “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEY EYES ONLY” on each page
5 that contains protected material. If only a portion or portions
6 of the material on a page qualifies for protection, the producing party
7 must also clearly identify the protected portion(s) (e.g., by making
8 appropriate markings in the margins) and must specify, for each
9 portion, the level of protection being asserted (either
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
11 ATTORNEY EYES ONLY”). A party or non-party who makes
12 original documents or materials available for inspection need not
13 designate them for protection until after the inspecting party has
14 indicated which material it would like copied and produced.
15 During the inspection and before the designation, all of the
16 material made available for inspection shall be deemed “HIGHLY
17 CONFIDENTIAL – ATTORNEY EYES ONLY.” After the
18 inspecting party has identified the documents it wants copied and
19 produced, the producing party must determine which documents,
20 or portions thereof, qualify for protection under this Order.
21 Before producing the specified documents, the producing party
22 must affix the appropriate legend (“CONFIDENTIAL” or
23 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) on
24 each page that contains protected material. If only a portion of the
25 material on a page qualifies for protection, the producing party
26 must also clearly identify the protected portion (e.g., by making
27 appropriate markings in the margins) and must specify, for each
28 portion, the level of protection being asserted (either
“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
ATTORNEY EYES ONLY”).

b. For testimony given in deposition, the party or non-party offering
or sponsoring the testimony should identify on the record, before
the close of the deposition, all protected testimony, and further
specify any portions of the testimony that qualify as “HIGHLY
CONFIDENTIAL – ATTORNEY EYES ONLY.” When it is
impractical to identify separately each portion of testimony that is
entitled to protection, and when it appears that substantial portions
of the testimony may qualify for protection, the party or non-party
that sponsors, offers or gives the testimony may invoke on the
record (before the deposition is concluded) a right to have up to 20
days to identify the specific portions of the testimony as to which
protection is sought and to specify the level of protection being
asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
ATTORNEY EYES ONLY”). Only those portions of the
testimony that are appropriately designed for protection within the
20 days shall be covered by the provisions of this Order.
Transcript pages containing protected material must be separately
bound by the court reporter, who must affix on each such page the
legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
ATTORNEY EYES ONLY,” as instructed by the party or non-
party offering or sponsoring the witness or presenting the
testimony. Although testimony given in a pretrial or trial
proceeding is presumptively public, nothing in this order
precludes the party or non-party offering or sponsoring testimony
in such proceeding, from seeking leave of the presiding court to

1 afford appropriate protection to “CONFIDENTIAL” or
2 “CONFIDENTIAL– ATTORNEY EYES ONLY” information.

- 3 c. For information produced in some form other than documentary,
4 and for any other tangible items, the producing party should affix
5 in a prominent place on the exterior of the container or containers
6 in which the information or item is stored the legend
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEY EYES ONLY.” If only portions of the information
9 or item warrant protection, the producing party, to the extent
10 practicable, shall identify the protected portions, specifying
11 whether they qualify as “CONFIDENTIAL” or as “HIGHLY
12 CONFIDENTIAL – ATTORNEY EYES ONLY.”

13 5.3 Inadvertent Failures to Designate. If corrected within 14 days of
14 discovering the failure to designate, an inadvertent failure to designate qualified
15 information or items as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –
16 ATTORNEY EYES ONLY” does not, standing alone, waive the designating party’s
17 right to secure protection under this Order for such material. If material is
18 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEY EYES ONLY” after the material was initially produced, the receiving
20 party, on notification of the designation within 14 days of discovering the failure to
21 designate, must make reasonable efforts to assure that the material is treated in
22 accordance with this provisions of this Order.

23 **6. Challenging Confidentiality Designations.**

24 6.1 Timing of Challenges. Unless a prompt challenge to a designating
25 party’s confidentiality designation is necessary to avoid foreseeable substantial
26 unfairness, unnecessary economic burdens or a later significant disruption or delay of
27 the litigation, a party does not waive its right to challenge a confidentiality
28 designation by electing not to mount a challenge promptly after the original
designation is disclosed.

6.2 Meet and Confer. A party that elects to initiate a challenge to a
designating party’s confidentiality designation must do so in good faith and must
begin the process by conferring directly (in voice to voice dialogue; other forms of
communication are not sufficient) with counsel for the designating party. Upon

1 request by the challenging party, the designating party must meet and confer pursuant
2 to this paragraph within five (5) days. In conferring, the challenging party must
3 explain the basis for its belief that the confidentiality designation was not proper and
4 must give the designating party an opportunity to review the designated material, to
5 reconsider the circumstances and, if no change in designation is offered, to explain
6 the basis for the chosen designation. A challenging party may proceed to the next
7 stage of the challenge process only if it has engaged in this meet and confer process
8 first.

9 6.3 Judicial Intervention. Except to the extent inconsistent with
10 Paragraph 6.2 above, a party that elects to press a challenge to a confidentiality
11 designation after considering the justification offered by the designating party must
12 proceed pursuant to Civil Local Rules 37-1 through 37-4. The burden of persuasion
13 in any such challenge proceeding shall be on the designating party. Until the Court
14 rules on the challenge, all parties shall continue to afford the material in question the
15 level of protection to which it is entitled under the producing party’s designation.

16 **7. Access to and Use of Protected Material**

17 7.1 Basic Principles. A receiving party may use protected material
18 that is disclosed or produced by another party or by a non-party in connection with
19 this case only for prosecuting, defending or attempting to settle this litigation. Such
20 protected material may be disclosed only to the categories of persons and under the
21 conditions described in this Order. When the litigation has been terminated, a
22 receiving party must comply with the provisions of Section 11 below (Final
23 Disposition). Protected material must be stored and maintained by a receiving party
24 at a location and in a secure manner that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
27 otherwise ordered by the Court or permitted in writing by the designating party, a
28

1 receiving party may disclose any information or item designated CONFIDENTIAL
2 only to:

- 3 a. The receiving party’s outside counsel of record in this action, as
4 well as employees of counsel to whom it is reasonably necessary
5 to disclose the information for this litigation.
- 6 b. The officers, directors and employees (including house counsel) of
7 the receiving party to whom disclosure is reasonably necessary for
8 this litigation and who have signed the “Agreement to be Bound
9 by Protective Order” (*Exhibit A*).
- 10 c. Experts (as defined in this Order) of the Receiving party to whom
11 disclosure is reasonably necessary for this litigation an who have
12 signed the “Agreement to be Bound by Protective Order” (*Exhibit*
13 *A*).
- 14 d. The Court and its personnel;
- 15 e. During their depositions, witnesses in the action to whom
16 disclosure is reasonable necessary and who have signed the
17 “Agreement to be Bound by Protective Order” (*Exhibit A*). Pages
18 of transcribed deposition testimony or exhibits to depositions that
19 reveal protected material must be separately bound by the court
20 reporter and may not be disclosed to anyone except as permitted
21 under this Order.
- 22 f. The author, addressee, and any recipients of the document or the
23 original source of the information.
- 24 g. Mediators employed by the parties, subject to the mediators
25 having signed the “Agreement to be Bound by Protective Order”
26 (*Exhibit A*).

27 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEY EYES
28 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in
writing by the designating party, a receiving party may disclose any information or
item designated “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” only to:

- 23 a. The receiving party’s outside counsel of record in this action, as
24 well as employees of counsel to whom it is reasonably necessary
25 to disclose the information for this litigation;
- 26 b. Experts (as defined in this Order (i) to whom disclosure is
27 reasonably necessary for this litigation and (ii) who have signed
28 the “Agreement to be Bound by Protective Order” (*Exhibit A*);
- 29 c. The Court and its personnel; and

1 d. The author, addressee, and any recipients of the document or the
2 original source of the information.

3 **8. Protected Material Subpoenaed or Ordered Produced in Other**
4 **Litigation.** If a receiving party is served with a subpoena or an order issued in other
5 litigation that would compel disclosure of any information or items designated in this
6 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES
7 ONLY,” the receiving party must so notify the designating party, in writing (by e-
8 mail or fax, if possible) immediately and in no event more than three court days after
9 receiving the subpoena or order. Such notification must include a copy of the
10 subpoena or court order. The receiving party also must immediately inform in
11 writing the party who caused the subpoena or order to issue in the other litigation that
12 some or all the material covered by the subpoena or order is the subject of this Order.
13 In addition, the receiving party must deliver a copy of this Order promptly to the
14 party in the other action that caused the subpoena or order to issue. The purpose of
15 imposing these duties is to alert the interested parties to the existence of this Order
16 and to afford the designating party in this case an opportunity to try to protect its
17 confidentiality interests in the court from which the subpoena or order issued. The
18 designating party shall bear the burdens and the expenses of seeking protection in that
19 court of its confidential material – and nothing in these provisions should be
20 construed as authorizing or encouraging a receiving party in this action to disobey a
21 lawful directive from another court.

22 **9. Unauthorized Disclosure of Protected Material.** If a receiving party
23 learns that, by inadvertence or otherwise, it has disclosed protected material to any
24 person or in any circumstance not authorized under this Order, the receiving party
25 must immediately (a) notify in writing the designating party of the unauthorized
26 disclosures, (b) use its best efforts to retrieve all copies of the protected material, (c)
27 inform the person or persons to whom unauthorized disclosures were made of all the
28

1 terms of this Order, and (d) request such person or persons to execute the
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as *Exhibit A*.

3 **10. Filing Protected Material.** Without written permission from the
4 designating party or a court order secured after appropriate notice to all interested
5 persons, a party may not file in the public record in this action any protected material.
6 A party that seeks to file under seal any protected material must comply with Civil
7 Local Rule 79-5.1.

8 **11. Final Disposition.** Unless otherwise ordered or agreed in writing by the
9 producing party, within 60 days after the final termination of this action, each
10 receiving party must return all protected material to the producing party. As used in
11 this subdivision, “all protected material” includes all copies, abstracts, compilations,
12 summaries or any other form of reproducing or capturing any of the protected
13 material. With permission in writing from the designating party, the receiving party
14 must destroy some or all of the protected material instead of returning it. Whether the
15 protected material is returned or destroyed, the receiving party must submit a written
16 certification to the producing party (and, if not the same person or entity, to the
17 designating party) by the 60-day deadline that identifies (by category, where
18 appropriate) all the protected material that was returned or destroyed and that affirms
19 that the receiving party has not retained any copies, abstracts, compilations,
20 summaries or other forms of reproducing or capturing any of the protected material.
21 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
22 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
23 work product, even if such materials contain protected material. Any such archival
24 copies that contain or constitute protected material remain subject to this Order as set
25 forth in Section 4 (Duration) above.

26 **12. Miscellaneous.**

27 **12.1 Right to Further Relief.** Nothing in this Order abridges the right
28 of any person to seek its modification by the Court in the future.

1 **Exhibit A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____, of _____
4 [address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the U.S. District Court
6 for the Central District of California on _____ in the case of
7 *Amador, et al. vs. Logistics Express, Inc. v. Trimac Transportation Services*
8 *(Western), Inc.*, Case No. CV10-4112-GHK(JCx) consolidated with *Lara v. Trimac*
9 *Transportation Services (Western), Inc.*, Case No. CV10-4280-GHK(JCx) agree to
10 comply with and to be bound by all the terms of this Order, and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment
12 in the nature of contempt. I solemnly promise that I will not disclose in any manner
13 any information or item that is subject to this Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the U.S. District Court for the
16 Central District of California for the purpose of enforcing the terms of this Order,
17 even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint _____ [name]
19 of _____
20 [address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this Order.
22

23 _____
24 Signature

25 _____
26 Printed Name

27 _____
28 City and state where sworn and signed
Date: _____