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 17 SCHNEIDER NATIONAL CARRIERS, INC.

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 LUIS POLANCO, an individual;
 21 ALAN KRUMBINE, an individual;
 ASUNCION ARIAS, an individual, on
 behalf of themselves and all others
 similarly situated,

22 Plaintiffs,

23 v.

24
 25 SCHNEIDER NATIONAL
 CARRIERS, INC., a Nevada
 26 Corporation; and DOES 1 through 50,
 inclusive,

27 Defendants.
 28

Case No. CV-10-04565 GHK (JEMx)

**[PROPOSED] PROTECTIVE
 ORDER REGARDING
 CONFIDENTIAL INFORMATION**

Complaint Filed: February 5, 2010
 Trial Date: None Set
 Judge: Hon. George H. King

1 **PROTECTIVE ORDER**

2 Pursuant to the parties' stipulation and good cause appearing, the Court
3 hereby approves this Protective Order. The Protective Order shall govern handling
4 of the parties' Confidential Information, Highly Confidential Information, and
5 Privileged Information, and Work Product Information, as those terms are defined
6 below.

7 **DEFINITIONS**

8 1. As used in this Protective Order, "Confidential Information" means
9 information that a party believes constitutes trade secrets or other confidential
10 business, financial, research, development, or commercial information, or non-
11 public information concerning individuals, and that the party in good faith believes,
12 given its nature, should be afforded confidential treatment and which the parties
13 would not disclose but for the entry of this Protective Order. When designating
14 information or materials as Confidential in accordance with this Protective Order,
15 the designating party shall use the designation "Confidential."

16 2. As used in this Protective Order, "Highly Confidential Information"
17 means extremely sensitive Confidential Information whose disclosure to another
18 party or nonparty would create a substantial risk of serious injury that could not be
19 avoided by less restrictive means. When designating information or materials as
20 Highly Confidential in accordance with this Protective Order, the designating party
21 shall use the designation "Highly Confidential – Attorneys' Eyes Only."

22 3. As used in this Protective Order, "Privileged Information" means
23 information protected from disclosure pursuant to an applicable legal privilege,
24 such as the attorney-client privilege.

25 4. As used in this Protective Order, "Work Product Information" means
26 information protected from disclosure pursuant to the attorney work product
27 doctrine.

1 **CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

2 5. The parties may designate as “Confidential” or “Highly Confidential –
3 Attorneys’ Eyes Only” and thereby subject to the terms of this protective order any
4 materials, in any form, referring to the contents of Confidential Information or
5 Highly Confidential Information as follows:

6 (a) If Confidential Information or Highly Confidential Information
7 are referred to in a document (as defined in Evidence Code section 250) and
8 produced by the party seeking to designate it as Confidential or Highly
9 Confidential, the party shall mark the face of each page of the document
10 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” respectively. If a
11 document referring to the contents of Confidential Information or Highly
12 Confidential Information is produced by someone other than the party seeking to
13 designate the document as Confidential or Highly Confidential, the party seeking
14 to designate the document as Confidential or Highly Confidential shall designate
15 the document as such by notifying the other parties to the action in writing that it
16 considers the document to contain Confidential Information or Highly Confidential
17 Information and the adverse parties receiving the document shall treat it as
18 Confidential (or Highly Confidential if designated as such), and take steps they
19 deem reasonably necessary to ensure that others who have received the document
20 treat it as Confidential (or Highly Confidential if designated as such). The parties
21 may agree to designate as “Confidential” or “Highly Confidential – Attorneys’
22 Eyes Only” any document produced prior to the date of this Protective Order.

23 (b) If a discovery response referring to the contents of Confidential
24 Information or Highly Confidential information is made by someone other than the
25 party seeking Confidential or Highly Confidential treatment, the party seeking to
26 designate the response as Confidential or Highly Confidential shall designate the
27 response as such by notifying the other parties to the action in writing that it
28 considers the response to contain Confidential Information or Highly Confidential

1 Information and the adverse parties receiving the response shall treat it as
2 Confidential (or Highly Confidential if designated as such) and take steps they
3 deem reasonably necessary to ensure that others who have received the response
4 treat it as Confidential (or Highly Confidential if designated as such). If the
5 contents of Confidential Information or Highly Confidential Information are
6 referred to in discovery responses by the party seeking Confidential or Highly
7 Confidential treatment, the party shall designate the response as Confidential or
8 Highly Confidential when responding to the request. The parties may agree to
9 designate as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” any
10 such response given prior to the date of this Protective Order.

11 (c) If the contents of Confidential Information or Highly
12 Confidential Information are referred to in testimony in any proceeding in this
13 action, the party seeking to designate the testimony as Confidential or Highly
14 Confidential shall do so on the record at the time the testimony is given or by
15 giving written notice to the parties within a reasonable time after the designating
16 party’s receipt of the transcript containing such testimony. “Reasonable time” shall
17 normally be 30 days from the designating party’s receipt of the transcript
18 containing such testimony. The parties shall cooperate in allowing longer or
19 shorter periods of time as needs of the case arise.

20 6. Unless otherwise agreed, the parties shall use each other’s
21 Confidential Information and Highly Confidential Information produced in this
22 Action solely for purposes of the above-captioned action (the “Action”) or any
23 related legal proceedings, and shall not use such Confidential Information or Highly
24 Confidential Information for any other purpose or in any other action or litigation,
25 and shall not disclose, communicate, produce, or otherwise make such Confidential
26 Information or Highly Confidential Information available to anyone except as
27 specified in this Protective Order. Nothing in this Protective Order shall prevent or
28 restrict a party from using, disclosing, producing, communicating or otherwise

1 making available their own Confidential Information or Highly Confidential
2 Information as it deems appropriate.

3 7. “Qualified Persons” to whom Confidential Information may be
4 disclosed, communicated, produced or otherwise made available are:

5 (a) Attorneys of record for any party in this action and their
6 associated lawyers, legal assistants, secretarial and clerical personnel engaged in
7 assisting them in this litigation and who shall be advised and be bound by the terms
8 of this Protective Order;

9 (b) Parties to the action, including those employed by the party
10 who are involved with the prosecution or defense of the action - provided that such
11 persons understand the need to maintain the confidentiality of the information;

12 (c) Consultants and experts retained by the parties in this action;

13 (d) The Court and court personnel as needed for the purposes of
14 this litigation, and the court reporter, provided that the requirements of Paragraph 7
15 below are followed;

16 (e) Court reporters transcribing depositions or testimony in the
17 Action, any outside photocopying, graphic production services, litigation support
18 services, or investigators employed by the parties or their counsel to assist in the
19 Action and’ computer personnel performing duties in relation to a computerized
20 litigation system;

21 (f) Any other person whom the parties agree upon in writing; and

22 (g) the author of the document, the original source of the
23 information, or in the case of personal information, the person as to whom the
24 information is personal.

25 8. Confidential Information may be disclosed to Qualified Persons
26 identified in Paragraphs 5(a), (b) (d) and (e) above, without notice. Information
27 designated as Confidential Information may be disclosed to Qualified Persons
28 identified in Paragraphs 5(c) and (f) only on the condition that the disclosing party

1 (1) advises such Qualified Persons of the contents of this Protective Order and (2)
2 has them sign the “ACKNOWLEDGMENT OF AND AGREEMENT TO BE
3 BOUND BY PROTECTIVE ORDER” that is attached to this Protective Order.
4 Executed copies of such acknowledgments shall be retained by the party obtaining
5 them and shall be made available for inspection and copying by the other parties or
6 upon order of the Court.

7 9. Unless otherwise ordered by the Court or permitted in writing by the
8 designating party, material designated as “Highly Confidential – Attorneys’ Eyes
9 Only” may be disclosed only to (a) the Court and its personnel; (b) the author of the
10 document, the original source of the information, or in the case of personal
11 information, the person as to whom the information is personal; (c) court reporters,
12 their staffs, and professional vendors to whom disclosure is reasonably necessary
13 for this litigation and who have signed the “ACKNOWLEDGMENT OF AND
14 AGREEMENT TO BE BOUND BY PROTECTIVE ORDER” that is attached to
15 this Protective Order; or (d) the receiving party’s counsel of record in this action, as
16 well as employees, consultants, and experts of said counsel to whom it is reasonably
17 necessary to disclose the information for this litigation and who have signed the
18 “ACKNOWLEDGMENT OF AND AGREEMENT TO BE BOUND BY
19 PROTECTIVE ORDER” that is attached to this Protective Order. Executed copies
20 of such acknowledgments shall be retained by the party obtaining them and shall be
21 made available for inspection and copying by the other parties or upon order of the
22 Court.

23 10. Confidential Information or Highly Confidential Information will be
24 kept in a manner that is reasonably calculated to ensure that the Confidential
25 Information or Highly Confidential Information will not be disclosed to any
26 individual not authorized to receive or review such Confidential Information or
27 Highly Confidential Information.

28 11. Any pleadings, exhibits or filings which contain Confidential

1 Information or Highly Confidential Information, or testimony designated as
2 Confidential Information or Highly Confidential Information shall be submitted to
3 the Court only in accordance with the procedures set forth in Rule 79-5 of the Local
4 Rules of this Court. If the Court grants an application to file under seal any
5 pleadings, exhibits or filings designated in whole or part as Confidential
6 Information or Highly Confidential Information, such information may be filed
7 under seal in accordance with the Court's order. If the Court denies an application
8 to file under seal any pleadings, exhibits or filings designated in whole or part as
9 Confidential Information or Highly Confidential Information, such information may
10 be filed without being sealed.

11 12. Within sixty (60) days after final disposition of this action, the parties
12 shall return working copies of the other parties' Confidential Information or Highly
13 Confidential Information, or shall destroy all working copies thereof in their
14 possession, or shall securely archive working copies thereof in their possession. The
15 parties shall execute and deliver a certification of compliance with the provisions of
16 this paragraph. This obligation shall not apply to pleadings, motions, briefs,
17 supporting affidavits, attorney notes, transcripts, or Court opinions and orders
18 (although the restrictions imposed herein shall continue to apply to any Confidential
19 Information or Highly Confidential Information attached to such pleadings,
20 motions, briefs, or supporting affidavits). This Order shall not prevent any party
21 from applying to the Court for further or additional protective orders.

22 13. The parties agree that by entering into this Order, they do not waive or
23 compromise their position regarding any information designated as Confidential
24 Information or Highly Confidential information. By providing such Confidential
25 Information or Highly Confidential Information, the parties do not admit that
26 Confidential Information or Highly Confidential Information is relevant to this
27 action and do not waive their objections to the production or disclosure of
28 Confidential Information or Highly Confidential Information.

1 14. This Protective Order does not preclude the parties from seeking
2 immediate relief from this Protective Order on such notice as is appropriate under
3 the circumstances, or from seeking such other relief or protective orders as may be
4 appropriate under the Code of Civil Procedure. The parties may apply to the Court
5 for modification of, or release from, this Protective Order. Prior to any such
6 application, the parties shall meet and confer and seek agreement to such
7 modification or release.

8 15. If at any time a party objects to a designation of information and
9 discovery materials as Confidential or Highly Confidential under this Protective
10 Order, the objecting party shall notify the designating party in writing or on the
11 record at a deposition. The objecting party shall identify the information in the
12 question and shall specify in reasonable detail the reason or reasons for the
13 objection. Within ten (10) calendar days of the receipt of such notice, the
14 designating party and the objecting party shall meet and confer in an effort to
15 resolve their differences. If the parties cannot resolve their disagreement, the
16 designating party may, at any time, make an application to the Court for a ruling on
17 the designating party's designation of the information or materials as Confidential
18 or Highly Confidential. Nothing herein shall be construed as preventing any party
19 from objecting to the designation of any document as Confidential or Highly
20 Confidential or preventing any party from seeking further protection for any
21 material it produces in discovery.

22 16. Each party shall have the responsibility, through counsel, to advise the
23 designating party of any losses or compromises of the confidentiality of information
24 or documents governed by this order. It shall be the responsibility of the party that
25 lost or compromised the Confidential Information or Highly Confidential
26 Information of the designating party to take reasonable measures to limit the loss or
27 unauthorized disclosure.

28 17. Nothing in this order shall prejudice in any way the rights of any party

1 to introduce into evidence at trial any document, testimony, or other evidence
2 subject to this Stipulation, or prejudice in any way the rights of any party to object
3 to the authenticity or admissibility into evidence of any document, testimony, or
4 other evidence subject to this Stipulation.

5 18. Any non-party producing Confidential Information or Highly
6 Confidential Information in the Action may designate such materials as
7 Confidential or Highly Confidential in accordance and consistent with the terms and
8 provisions of this Order.

9 19. If additional persons become parties to the Action, such parties shall
10 not have access to material designated as “Confidential” or “Highly Confidential –
11 Attorneys’ Eyes Only” until the newly-joined parties or their counsel confirm in
12 writing to all other parties that they have read this Stipulation and agree to be bound
13 by its terms.

14 **INADVERTENT PRODUCTION OF**
15 **PRIVILEGED AND WORK PRODUCT INFORMATION**

16 The inadvertent production of any document or other information during
17 discovery in this action shall be without prejudice to any claim that such material is
18 protected by any legally cognizable privilege or evidentiary protection including,
19 but not limited to, the attorney-client privilege or the attorney work product
20 doctrine, and no party shall be held to have waived any rights by such inadvertent
21 production.

22 Upon written notice of an unintentional production by the producing party or
23 oral notice if notice must be delivered at a deposition, the receiving party must
24 promptly return or destroy the specified document and any hard copies the
25 receiving party has and may not use or disclose the information until the privilege
26 or work product claim has been resolved. To the extent that the producing party
27 insists on the return or destruction of electronic copies, rather than disabling the
28 documents from further use or otherwise rendering them inaccessible to the

1 receiving party, the producing party shall bear the costs of the return or destruction
2 of such electronic copies.

3 To the extent that the information contained in a document subject to a claim
4 has already been used in or described in other documents generated or maintained
5 by the receiving party, then the receiving party will sequester such documents until
6 the claim has been resolved. If the receiving party disclosed the specified
7 information before being notified of its inadvertent production, it must take
8 reasonable steps to retrieve it. The producing party shall preserve the specified
9 information until the claim is resolved.

10 The receiving party shall, within ten (10) days from receipt of notification of
11 the inadvertent production, determine in good faith whether to contest such claim
12 and to notify the producing party in writing of an objection to the claim of
13 privilege or work product protection and the grounds for that objection.

14 If the producing party, following receipt of an objection from the receiving
15 party, wishes to maintain the claim of privilege or work product protection, it shall,
16 within ten (10) days from the receipt of the objection notice, submit the specified
17 information to the Court under seal for a determination of the claim and shall
18 provide the Court with the grounds for the asserted privilege or protection. Any
19 party may request expedited treatment of any request for the Court's determination
20 of the claim.

21 Upon a determination by the Court that the specified information is
22 protected by a privilege or the attorney work product doctrine, and if the specified
23 information has been sequestered rather than returned or destroyed, the specified
24 information shall be returned or destroyed.

25 Upon a determination by the Court that the specified information is not
26 protected by the applicable privilege or is not protected by the attorney work
27 product doctrine, the producing party shall bear the costs of placing the
28 information into any programs or databases from which it was removed or

1 destroyed and render accessible any documents that were disabled or rendered
2 inaccessible, unless otherwise ordered by the Court.

3 **IT IS SO ORDERED.**

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5 Dated: December 1, 2010

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By: 
United States Magistrate Judge

1 **PROTECTIVE ORDER ATTACHMENT**

2 **ACKNOWLEDGMENT OF AND AGREEMENT**
3 **TO BE BOUND BY PROTECTIVE ORDER**

4 I, _____, state that:

5 1. My address is _____

6 _____
7 2. I have received a copy of the Stipulation and Protective Order
8 (“Order”) in this action, a copy of which is attached hereto. I have carefully read
9 and understand the provisions of the Order.

10 3. I will comply with all of the provisions of the Order. I will hold in
11 confidence, will not disclose to anyone not qualified under the Order, and will use
12 only for purposes set forth in the Order any Confidential Information which is
13 disclosed to me.

14 4. Specifically, I will exercise all reasonable due care with the
15 Confidential Information or Highly Confidential Information and will use the
16 information only for purposes of the underlying action.

17 5. Promptly upon termination of this action, I will return all Confidential
18 Information or Highly Confidential information that came into my possession, and
19 all documents or things that I have prepared relating thereto, to counsel for the party
20 by whom I am employed or retained.

21 6. I hereby submit to the jurisdiction of the court in this action solely for
22 the purpose of enforcement of this Order.

23 Signature: _____

24 Type or Print
25 Name Here: _____

26 Date: _____