

NOTE: CHANGES MADE BY THE COURT

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15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA
 17 WESTERN DIVISION

18 GRAYLING TAYLOR, an individual,
 and BRUCE BROWN, an individual on
 19 behalf of himself and others similarly
 20 situated,

21 Plaintiffs,

22 v.

23 SHIPPERS TRANSPORT EXPRESS,
 INC., a California corporation, SSA
 24 MARINE, a Washington corporation, and
 DOES 1 to 10 inclusive,

25 Defendants.

) Case No.: CV13-02092-BRO (PLAx)
) *Honorable Beverly Reid O'Connell*
)
) Removed from:
)
) Superior Court of the State of
) California for the County of Los
) Angeles Case No.: BC477047

STIPULATED PROTECTIVE ORDER

Gordon & Rees LLP
 101 West Broadway, Suite 2000
 San Diego, CA 92101

1 **TO THE COURT:**

2 The parties hereto, Plaintiffs Bruce Brown and Grayling Taylor,
3 (collectively hereafter referred to as “Plaintiffs”), on the one hand, and Defendants
4 SSA Marine, Inc., and Shippers Transport Express, Inc. (collectively hereafter
5 referred to as “Defendants”), on the other hand, by and through their respective
6 counsel of record, hereby stipulate to the entry of a Protective Order pursuant to
7 Federal Rule of Civil Procedure 26(c).

8 On September 11, 2013, the Court issued its Order Re Plaintiff’s Motion to
9 Compel. In this Order, the Court stated that the parties may submit a stipulated
10 protective order by September 17, 2013 regarding the documents SSA Marine will
11 subsequently be producing by September 24, 2013. On September 16, 2013, the
12 Parties agreed that Shippers Transport Express, Inc., should also be made a party to
13 the stipulated protective order for uniformity and efficiency purposes.

14 **GOOD CAUSE STATEMENT**

15 There is good cause for this Protective Order because discovery, and its
16 accompanying disclosures in this case will likely involve the production of
17 confidential, proprietary, or private information and/or documentation of
18 Defendants and third parties. Such information may include, but is not limited to,
19 personal information of employees of Defendants and third parties. Additionally,
20 such information may include trade secrets, confidential proprietary and private
21 commercial and financial information, such as confidential transactions between
22 the individual Defendants and their respective third party customers, and financial
23 account information of Defendants not generally subject to public disclosure. This
24 confidential information may also include agreements, contracts, business
25 arrangements, and confidential logistical and/or financial communications between
26 Defendants and third parties not generally subject to public disclosure.

27 Special protection of these categories of information from public disclosure
28 and/or from use for any purpose other than prosecuting or defending this litigation

1 is warranted. Accordingly, the parties hereby stipulate to the Court the entering
2 into of the following Protective Order. This Order does not confer blanket
3 protections on all disclosures or responses to discovery, and the protection it
4 affords extends only to the limited information or items that are entitled to, under
5 the applicable legal principles, treatment as confidential. As such, the Protective
6 Order will contain the following terms and conditions:

7 **STIPULATION**

8 1. Proceedings and Information Governed. This Stipulation and Order
9 will govern any document, information, or other thing furnished or produced by
10 any party, including third parties, to any other party in connection with this action
11 that might reveal confidential business information, including but not limited to
12 trade secrets, proprietary information, and financial information which may be
13 produced in this action and designated by the producing party as “confidential
14 information or material” as defined below. The information protected includes, but
15 is not limited to, information contained in responses to written discovery;
16 deposition testimony and exhibits; and all copies, extracts, summaries,
17 compilations, designations, and portions of the foregoing.

18 2. Confidential Information or Material Defined. For purposes of this
19 Stipulation and accompanying Order, “confidential information or material” will
20 mean all information or material that:

21 a. Is produced for or disclosed to a receiving party (Plaintiffs or
22 Defendants); and

23 b. A party (Plaintiffs or Defendants) reasonably and in good faith
24 believes such information and material constitute confidential information as set
25 forth in Rule 26(c) of the Federal Rules of Civil Procedure, or otherwise constitute
26 business proprietary and/or confidential material or financial information, whether
27 embodied in physical objects, documents, or other factual knowledge of persons,
28

1 and specifically shall include but not necessarily be limited to third party
2 information; and

3 c. Has been designated as confidential information by the
4 producing party in compliance with this Stipulation and Order, and prior to its
5 production.

6 3. Designation of Confidential Information or Material. The producing
7 party may designate confidential information by stamping or affixing to the
8 physical objects, documents, discovery responses, or deposition transcripts a stamp
9 or other inscription that (1) states: “Confidential” and (2) the case number: “CV13-
10 02092- BRO (PLAx).”

11 For written material, documents, or other tangible items, the
12 designation of confidential information or material must be made when the
13 material is produced to the receiving party. The designation of any particular page
14 of written material shall indicate that all information contained on that page is
15 designated “confidential” unless otherwise indicated.

16 For information not reduced to written material, documents, or other
17 tangible items, or information that cannot be conveniently designated as set forth in
18 this paragraph, the producing party must designate the confidential information by
19 giving written notice to the receiving party at the time the confidential information
20 is produced. The written notice must clearly identify that part of the information
21 being produced that is designated as confidential.

22 4. Party’s Own Information. The restrictions on the use of confidential
23 information established by this Stipulation and Order apply only to the use by a
24 party of confidential information received from another party to this action, or
25 from a non-party to this action, and shall not apply to the use by a party of
26 his/her/its own information.

27 5. Persons Authorized to Receive Confidential Information and Material.
28 For purposes of this Stipulation and Order, the term “qualified recipient” of

1 information and material that has been designated pursuant to the terms of this
2 Stipulation and Order shall mean:

3 (a) The parties to this action, including officers, directors, and
4 other employees of the party to whom disclosure of confidential information is
5 deemed necessary by that party for purposes of this action only;

6 (b) The attorneys of record in this action, attorneys employed in-
7 house by or on behalf of the parties, any attorneys retained by the parties in this
8 action to consult on the litigation, their respective partners, associates, clerks, legal
9 assistants, secretaries, and stenographic and support personnel, and such other
10 persons retained by such attorneys to provide litigation support services in this
11 action; and

12 (c) Experts and consultants, consistent with the provisions of
13 paragraph 10 below.

14 All persons identified in subparagraph (c) above shall complete and
15 sign a declaration in the form of Attachment “A” to this Stipulation and Order,
16 stating that he or she has read and understands the terms of this Stipulation and
17 Order and agrees to be bound by its terms. The person’s signature shall, and
18 hereby is intended to, cover employees of such persons to whom it is necessary
19 that the information and/or material be disclosed for purposes of this action. Each
20 person to whom disclosure of confidential information is made agrees to be subject
21 to the jurisdiction of this Court solely for purposes of proceedings relating to that
22 person’s performance under, compliance with, or violation of this Order. The
23 original executed declaration shall be maintained by the attorney of record for the
24 party causing the disclosure, and shall be made available for inspection by any
25 other party on three (3) days prior written notice, except as provided in Paragraph
26 10 herein below.

27 6. Challenges To and Removal of Confidential Designation. Nothing in
28 this Stipulation and Order shall preclude any party from challenging a designation

1 of any information or material as “confidential” by any other party. If designated
2 by a party as “confidential,” information and material will be so treated for all
3 purposes, and shall continue to be treated as confidential unless and until the Court
4 rules to the contrary. Any party may challenge or object to the designation as
5 “confidential” of any information and material and/or seek removal of particular
6 items of confidential information from this Order by giving counsel for all other
7 parties written notice of the objection within thirty (30) days of receipt of the
8 information or material, which notice shall contain and be supported by reasons for
9 the objection, and specify the items of confidential information and material for
10 which removal of the confidential designation is sought. The written notice shall
11 have attached a copy of such designated material or shall identify each document
12 by production number or deposition by page number and shall (a) state that the
13 receiving party objects to the designation and (b) set forth the particular reasons for
14 such objection. Counsel for the designating party shall then initiate a conference in
15 good faith in an effort to resolve any dispute concerning such designation. If such
16 dispute cannot be resolved, the party designating the information as “confidential”
17 shall file a motion ~~within fifteen (15) days of the written objection~~ **in full**
18 **compliance with Local Rule 37** requesting that the Court determine whether the
19 disputed information should be subject to the terms of this Order. The disputed
20 information shall be treated as “confidential” under the terms of this Order until the
21 Court rules on the motion.

22 For purposes of this Stipulation and Order, “receipt” of an objection
23 made pursuant to this paragraph shall mean: on completion of transmission, if
24 service is made by facsimile; on delivery, if service is made personally; two days
25 after mailing, if service is made by express mail or other means of overnight
26 delivery; and three days after the date of mailing, if service is made by regular
27 mail.

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1 7. Use of Confidential Information and Material. Any information or
2 material designated as “confidential” will be handled by the receiving party, and all
3 other parties who receive copies of said information and/or material, in accordance
4 with the terms of this Stipulation and Order. Information and material designated
5 as “confidential” will be held in confidence by each receiving party, will be used
6 by each receiving party only for purposes of this action and trial and not for any
7 business, competitive, or other purpose unless agreed to in writing in advance by
8 all parties to this action or as authorized by further order of the Court, and will not
9 be disclosed to, or the substance discussed with, any person who is not a qualified
10 recipient, except as provided in this Order.

11 8. Copies of Confidential Information and Material. Nothing in this
12 Stipulation and Order shall prevent or otherwise restrict a qualified recipient from
13 making working copies, abstracts, summaries, digests, and analyses of confidential
14 information for use in connection with this action. All working copies, abstracts,
15 summaries, digests, and analyses will be considered confidential information under
16 the terms of this Order.

17 9. Transmission of Confidential Information and Material. Nothing in
18 this Stipulation and Order shall prevent or otherwise restrict the transmission or
19 communication of confidential information between or among qualified recipients.

20 10. Disclosure to Experts and Consultants. If, in the exercise of his/her/its
21 sole discretion, a qualified recipient determines it necessary to disclose a producing
22 party’s confidential information to an independent (i.e., not party-affiliated)
23 technical or business expert or consultant retained by the qualified recipient or
24 his/her/its attorney to assist in this action, whether or not such person is designated
25 to testify as an expert at trial, the qualified recipient, prior to providing any
26 confidential information to the expert or consultant, will require the expert or
27 consultant to complete and sign a declaration in the form of Attachment “A” to this
28

1 Stipulation and Order, stating that he or she has read and understands this Order
2 and agrees to be bound by its terms.

3 Promptly after the parties exchange information on the experts
4 expected to testify at trial, the designating parties who have disclosed confidential
5 information to any designated experts or consultants pursuant to this section shall,
6 at the time of the designation, provide the other parties in this case with a copy of
7 all acknowledgment forms completed and signed by the designated experts or
8 consultants who received the confidential information or material.

9 11. Court Proceedings. Without written permission from the producing
10 party designating a document as confidential or a court order secured after
11 appropriate notice to all interested persons, a party may not file in the public record
12 in this action any document designated as confidential unless it is filed under seal
13 in compliance with the Federal Rules of Civil Procedure and Central District Local
14 Rules, and any special orders issued by Judge O’Connell.

15 12. Testimony. Notwithstanding any provision of this Stipulation and
16 Order to the contrary, any person may be examined as a witness at deposition and
17 may testify concerning all confidential information of which the person is the
18 author, addressee or has knowledge. If the examination concerns confidential
19 information, the producing party will have the right to exclude from that portion of
20 the deposition concerning the confidential information any person other than the
21 witness, the witness’s attorney(s), and qualified recipients of the confidential
22 information. If the witness and/or his or her attorney is not a qualified recipient,
23 then before the examination commences, the witness and his or her attorney each
24 will be requested to complete and execute an agreement, in the form of Attachment
25 “A” to this Order, that he or she will comply with the terms of this Order and
26 maintain the confidentiality of the confidential information disclosed during the
27 course of the interview or examination. If the witness and/or his or her attorney
28 decline to sign the agreement, the producing party has the right to adjourn the

1 examination to promptly seek a further protective order from the court prohibiting
2 the witness and/or his or her attorney from disclosing the confidential information.

3 Any court reporter who takes down testimony in this action, through
4 interview, examination, deposition or otherwise (collectively “deposition”), will be
5 given a copy of this Order and will be required to agree on the transcript of the
6 deposition, that he or she will not disclose any testimony and/or information
7 revealed at the deposition, except to the attorneys of record for the parties in this
8 action or to such other qualified recipients as the attorneys of record for the parties
9 so designate in writing to the court reporter. The transcript, the original, and all
10 copies of any deposition transcript and exhibits will be initially considered as a
11 whole to constitute confidential information subject to this Order and will be
12 conspicuously marked as described below. Any disputes over this designation, in
13 whole or in part, will be resolved through the procedure and in accordance with the
14 burden of proof designated in Paragraph 6, above, for challenges to the designation
15 as confidential information. Once resolved, or if no challenge is made, the reporter
16 will promptly conform the original transcript, and counsel will conform their
17 copies of the transcript in accordance with the agreed-upon or resolved
18 designation. The portions designated as confidential will thereafter be bound in a
19 separate booklet, conspicuously marked on the cover thereof with the words
20 “CONFIDENTIAL - SUBJECT OF PROTECTIVE ORDER,” and shall be treated
21 as confidential information subject to this Order.

22 13. Subpoenas. If any person or party having possession, custody, or
23 control of any confidential information receives a subpoena or other process or
24 order to produce confidential or special confidential information, he/she/it will
25 promptly:

- 26 (a) Notify in writing all attorneys of record;
- 27 (b) Furnish those attorneys with a copy of the subpoena or other
- 28 process of order; and

1 (c) Provide reasonable cooperation with respect to a procedure to
2 protect the confidential information sought to be pursued by the party whose
3 interests may be affected. If the party asserting confidentiality makes a motion to
4 quash or modify the subpoena, process, or order, there will be no disclosure,
5 process, or order until the Court has ruled on the motion, and then disclosure will
6 occur only in accordance with the ruling. If no motion is made despite a
7 reasonable opportunity to do so, the person or party receiving the subpoena or
8 other process or order will be entitled to comply with it if the person or party has
9 fulfilled his/her/its obligations under this Order.

10 14. Attorneys' Actions. Nothing in this Order will bar or otherwise
11 restrict an attorney who is a qualified recipient from:

12 (a) Rendering advice to his or her client with respect to this action;
13 or

14 (b) Generally referring to or relying on his or her examination of
15 documents that have been produced under this Order and that contain confidential
16 information.

17 15. No Waiver. The taking of, or the failure to take, any action to enforce
18 the provisions of this Order, or the failure to object to any designation or any such
19 action or omission, will not constitute a waiver of any right to seek and obtain
20 protection or relief, other than as specified in this Order, of any claim or defense in
21 this action or any other action, including but not limited to, any claim or defense
22 that any information:

23 (a) Is or is not relevant, material, or otherwise discoverable;

24 (b) Is or is not confidential or proprietary to any party;

25 (c) Is or is not entitled to particular protection; or

26 (d) Embodies or does not embody trade secrets or confidential
27 research, development, or commercial information of any party. In making this
28 claim or defense, the party must comply with the procedures described in this

1 Order. This Order is entered without prejudice to the right of any party to apply to
2 the Court at any time to relax or rescind the restrictions of this Order, when
3 convenience or necessity requires. The procedures set forth in this order will not
4 affect the rights of the parties to object to discovery on grounds other than those
5 related to trade secrets or proprietary information claims, nor will they relieve a
6 party of the necessity of proper response to discovery devices.

7 16. No Probative Value. This Order will not abrogate or diminish any
8 contractual, statutory, or other legal obligation or right of any party or person with
9 respect to any confidential information. The fact that information is designated as
10 “confidential” under this Order will not be considered to be determinative of what
11 a trier of fact may determine to be confidential or proprietary. Absent a stipulation
12 of all parties, the fact that information has been designated as “confidential” will
13 not be admissible during the trial of this action, nor will the jury be advised of this
14 designation. The fact that [a]ny information designated as “confidential” pursuant
15 to this Order has been disclosed, used, or produced in discovery or at trial in this
16 action shall not be construed to mean that the information is admissible.

17 Additionally, the fact that any information designated “confidential” pursuant to
18 this Order has been disclosed, used, or produced in discovery or at trial in this
19 action shall not be offered in any action or proceeding before any court, agency, or
20 tribunal as evidence that the information:

21 (a) Is or is not relevant, material, or otherwise admissible;
22 (b) Is or is not confidential or proprietary to any party;
23 (c) Is or is not entitled to particular protection; or
24 (d) Embodies or does not embody trade secrets or confidential
25 research, development, or commercial information of any party.

26 17. Return of Information and Materials. At the conclusion of this action,
27 all confidential information and materials will, within thirty (30) days of written
28 request of the party furnishing the information, be delivered to the party that

1 furnished the confidential information and materials. Notwithstanding this
2 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
3 papers, transcripts, legal memoranda, correspondence or attorney work product,
4 even if such materials contain confidential information. Any such archival copies
5 that contain or constitute confidential information remain subject to this Order. In
6 addition, all confidential or special confidential information not embodied in
7 written materials, documents, or tangible items will remain subject to this Order.

8 18. Court's Jurisdiction. The Court retains jurisdiction to make
9 amendments, modifications, deletions, and additions to this Order as the court from
10 time to time considers appropriate. The provisions of this Order regarding the use
11 or disclosure of information designated as "confidential" will survive the
12 termination of this action, and the Court will retain jurisdiction with respect to this
13 Order.

14 19. Notices. Any of the notice requirements in this Order may be waived,
15 in whole or in part, but only a writing signed by the attorney of record for the party
16 against whom such waiver is sought will be effective.

17 20. Amendments. The parties may amend this Stipulation and Order in
18 writing and may seek to have the amendments entered by the Court as part of this
19 Order.

20 21. Interpretation. This Stipulation has been negotiated at arm's length
21 and between and among persons sophisticated and knowledgeable in the matters
22 dealt with in this Stipulation. Accordingly, none of the parties hereto shall be
23 entitled to have any provisions of the Stipulation construed against any of the other
24 parties hereto in accordance with any rule of law, legal decision, or doctrine, such
25 as the doctrine of contra proferendum, that would require interpretation of any
26 ambiguities in this Stipulation against the party that has drafted it. The provisions
27 of this Stipulation shall be interpreted in a reasonable manner to effect the purposes
28 of the parties hereto and this Stipulation.

1 22. Binding on all Parties/Extension to Non-Parties. This Stipulation,
2 upon entry as an Order of the Court, shall bind the parties represented by the
3 undersigned counsel, the parties' agents, officers, directors, employees, and
4 representatives who receive notice of this Stipulation and Order, and all other
5 parties who appear in this case during the course of this litigation. If non-parties
6 produce documents and desire to have them produced under the terms of this
7 Order, the parties agree to meet and confer and, if unable to agree, the non-parties
8 may seek amendment to the Order by motion.

9
10 IT IS SO STIPULATED:

11 Dated: September 17, 2013

GORDON & REES LLP

12
13 By: s/ James J. McMullen, Jr.

14 JAMES J. MCMULLEN
15 STACEY M. COOPER
16 TARA J. GILLMAN
17 LISA A. HILL
18 Attorneys for Defendants

19
20 Dated: September 17, 2013

HAYES PAWLENKO LLP

21 By: /s/ Matthew B. Hayes

22 Matthew B. Hayes
23 Attorneys for Plaintiffs
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ATTACHMENT "A"

The undersigned hereby acknowledges that he/she has read the Protective Order agreed to by the parties and entered by the Court in the above-entitled action and understands the terms thereof, and agrees, upon threat of penalty of breach of contract and/or contempt of court, to be bound by such terms.

In particular, the undersigned understands that the terms of the Protective Order obligate him/her to use Confidential Information solely for the purposes of this litigation and any considerations of settlement hereof, and to not disclose any such Confidential Information to any other person, firm or concern not known to be bound by the Protective Order.

PRINTED NAME:

ADDRESS:

PHONE NUMBER:

Dated: _____

(Signature)

Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

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ORDER ON STIPULATION

The Court hereby approves this Joint Stipulation as to the entry of a Protective Order pursuant to Federal Rule of Civil Procedure 26(c) between Plaintiffs and Defendants, pertaining to documents and/or information to be produced in this matter.

IT IS SO ORDERED.



Dated: September 19, 2013

Paul L. Abrams
United States Magistrate Judge