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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DENIS GOBEILLE,
Plaintiff,

v.

UPS CARTAGE SERVICES, INC., a
Delaware corporation, and DOES 1-10,
inclusive,
Defendants.

Case No. 13-cv-02346-JFW (RZx)

**[PROPOSED] ORDER
GRANTING REVISED JOINT
STIPULATION FOR
PROTECTIVE ORDER**

Magistrate Judge: Hon. Ralph Zarefsky
Courtroom: 540

Complaint Filed: December 21, 2012
Trial Date: February 4, 2014

[DISCOVERY MATTER]

Pursuant to the Revised Joint Stipulation for a Protective Order submitted by Defendant UPS CARTAGE SERVICES, INC. (“Defendant”) and Plaintiff DENIS GOBEILLE (“Plaintiff”), the Court finds good cause exists for a Protective Order in this case based on the following relevant facts:

1. In 2007, Congress passed the Implementing Recommendations of the 9/11 Commission Act more commonly known as the 9/11 Act. This law requires that all cargo transported on a passenger aircraft be screened for explosives as of August 1, 2010. The Transportation Security Administration (TSA) developed the Certified Cargo Screening Program as a solution to help the industry reach the 100 percent

1 screening mandate. The program enables freight forwarders and shippers like
2 Defendant to pre-screen cargo prior to arrival at the airport. Given the highly
3 confidential nature of this program, and the concern that passenger cargo flights may
4 be put in jeopardy if such information is disclosed to the public domain, federal law
5 prohibits the disclosure of any “Sensitive Security Information” as defined by statute.
6 See 49 CFR 15.1, et seq. 29 C.F.R. 1520, et seq.

7 2. Defendant operates a Certified Cargo Screening Program at its facility in
8 Inglewood, California. Plaintiff was employed by Defendant as a Senior
9 Supervisor/Facility Services Coordinator at this facility. In this capacity, Plaintiff was
10 responsible for ensuring that cargo was properly screened in accordance with the
11 regulations promulgated by the TSA and in accordance with UPS’ internal policies
12 and procedures.

13 3. One of Plaintiff’s claims is that he was retaliated against for complaining
14 about perceived violations of the TSA regulations. Defendant maintains that Plaintiff
15 was terminated for violating its policies and procedures relating to its Certified Cargo
16 Screening Program. As such, Defendant’s internal policies and procedures pertaining
17 to the TSA regulations are directly relevant to this case.

18 4. While Defendant is precluded by law from disclosing “Sensitive Security
19 Information” as defined by statute, 49 CFR 15.1, et seq. 29 C.F.R. 1520, et seq., the
20 parties have agreed to exchange information that relates to Defendant’s internal
21 policies and procedures pertaining to the screening and handling of cargo for
22 international and domestic passenger flights. While not technically “Sensitive
23 Security Information” as defined by statute, such information does reveal UPS’
24 operations for screening cargo prior to tendering it to the airline for movement on a
25 passenger flight. If such procedures are disclosed to the public, the integrity of
26 Defendant’s Certified Cargo Screening Program would be in jeopardy. Even worse, if
27 this information got into the wrong hands, i.e. a terrorist organization, the public itself
28 could be in danger. As such, good cause exists. See *Foltz v. State Farm Mut. Auto.*

1 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) [“The common law right of access . . . is
2 not absolute and can be overridden given sufficiently compelling reasons for doing
3 so.”].

4 NOW THEREFORE, this Court approves and enters a Protective Order in this
5 case, with the terms and provisions set forth below:

6 5. Any party to this litigation shall have the right to designate as
7 “Confidential” and subject to this Order any information, document, or thing, or
8 portion of any document or thing which the designating party otherwise believes in
9 good faith contains information pertaining to Defendant’s Certified Cargo Screening
10 Program not otherwise prohibited from disclosure under 29 C.F.R. 1520, et seq. Any
11 party to this litigation who produces or discloses any Confidential Material, including
12 without limitation any information, document, thing, interrogatory answer, admission,
13 pleading, or testimony, shall mark the same with the foregoing or similar legend:
14 “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”
15 (hereinafter “Confidential Material”).

16 6. Any party to this litigation that designates information, documents, items
17 or oral or written communications for protection under this Order must take care to
18 limit any such designation to specific material that qualifies under the appropriate
19 standards. To the extent it is practical to do so, the designating party must designate
20 for protection only those parts of material, documents, items, or oral or written
21 communications that qualify – so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order. If it comes to a designating party’s
24 attention that information or items that it designated for protection do not qualify for
25 protection at all or do not qualify for the level of protection initially asserted, that
26 designating party must promptly notify all other parties that it is withdrawing the
27 mistaken designation.

28 7. All Confidential Material shall be used by the receiving party solely for

1 purposes of the prosecution or defense of this action, shall not be used by the
2 receiving party for any business, commercial, competitive, personal or other purpose,
3 and shall not be disclosed by the receiving party to anyone other than those set forth in
4 Paragraph 5, unless and until the restrictions herein are removed either by written
5 agreement of counsel for the parties, or by Order of the Court.

6 8. Unless otherwise ordered by the court or permitted in writing by the
7 designating party, a receiving party may disclose any information or item designated
8 “CONFIDENTIAL” only to:

9 a. Counsel for the parties, including outside counsel (herein defined
10 as any attorney at the parties’ outside law firms) and relevant in-house counsel for the
11 parties, as well as employees of all such Counsel to whom it is reasonably necessary
12 to disclose the information for this litigation;

13 b. Experts or consultants of the receiving party to whom disclosure is
14 reasonably necessary for this litigation, provided they have signed a non-disclosure
15 agreement in the form attached hereto as Exhibit A;

16 c. Secretarial, paralegal, clerical, duplicating and data processing
17 personnel of the foregoing;

18 d. The Court and its personnel;

19 e. Any deponent may be shown or examined on any information,
20 document or thing designated Confidential if it appears that the witness authored or
21 received a copy of it, was involved in the subject matter described therein or if the
22 designating party consents in writing to such disclosure;

23 f. The author or recipient of a document containing the information
24 or a custodian or other person who otherwise possessed or knew the information;

25 g. Vendors retained by or for the parties to assist in preparing for
26 pretrial discovery, trial and/or hearings including, but not limited to, court reporters,
27 litigation support personnel, jury consultants, individuals to prepare demonstrative and
28 audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as

1 well as their staff, stenographic, and clerical employees whose duties and
2 responsibilities require access to such materials; and

3 h. The parties. In the case of parties that are corporations or other
4 business entities, “party” shall mean executives who are required to participate in
5 decisions with reference to this lawsuit.

6 9. Confidential Material shall be used only by individuals permitted access
7 to it under Paragraph 8. Such Confidential Material, copies thereof, and the
8 information contained therein, shall not be disclosed in any manner to any other
9 individual, until and unless (a) counsel for the party asserting confidentiality waives
10 the claim of confidentiality, or (b) the Court orders such disclosure.

11 10. With respect to any depositions that involve a disclosure of Confidential
12 Material of a party to this action, such party shall have until thirty (30) days after
13 receipt of the deposition transcript within which to inform all other parties that
14 portions of the transcript are to be designated Confidential, which period may be
15 extended by agreement of the parties. No such deposition transcript shall be disclosed
16 to any individual other than the individuals described in Paragraph 8 above and the
17 deponent during these thirty (30) days, and no individual attending such a deposition
18 shall disclose the contents of the deposition to any individual other than those
19 described in Paragraph 8 above during said thirty (30) days. Upon being informed
20 that certain portions of a deposition are to be designated as Confidential, all parties
21 shall immediately cause each copy of the transcript in its custody or control to be
22 appropriately marked and limit disclosure of that transcript in accordance with
23 Paragraphs 8 and 9.

24 11. If counsel for a party receiving documents or information designated as
25 Confidential Material hereunder objects to such designation of any or all of such
26 items, the following procedure shall apply:

27 a. Counsel for the objecting party shall serve on the designating party
28 a written objection to such designation, which shall identify the documents or

1 information in question. Counsel for the designating party shall respond in writing to
2 such objection within ten (10) days, and shall state with particularity the grounds for
3 asserting that the document or information is Confidential. If no timely written
4 response is made to the objection, the challenged designation will be deemed to be
5 void. If the designating party or nonparty makes a timely response to such objection
6 asserting the propriety of the designation, counsel shall then confer in good faith in an
7 effort to resolve the dispute.

8 b. If a dispute as to a Confidential designation of a document or item
9 of information cannot be resolved by agreement, the proponent of the designation
10 being challenged shall present the dispute to the Magistrate Judge within 14 days of
11 the parties reaching an impasse. The document or information that is the subject of
12 the filing shall be treated as originally designated pending resolution of the dispute.

13 12. If a party wishes to file a document that has been designated as
14 Confidential by another party, the submitting party must give the designating party
15 five calendar days written notice of its intent to file. If the designating party objects, it
16 should notify the submitting party and file an application to file documents under seal
17 within two court days after receiving notice from the submitting party of its intent to
18 file.

19 13. In the event a party wishes to have documents filed under seal, that party
20 shall seek an order from the Court granting permission to file said material under seal
21 in accordance with United States District Court, Central District of California Local
22 Rule 79-5 and the Judge's Standing Order. Subject to public policy and further court
23 order, nothing shall be filed under seal, and the court shall not be required to take any
24 action, without separate prior order by the Judge before whom the hearing or
25 proceeding will take place, after application by the affected party with appropriate
26 notice to opposing counsel. If the Court grants a party permission to file an item
27 under seal, a duplicate disclosing all non-confidential information shall be filed and
28 made part of the public record. The item may be redacted to eliminate confidential

1 material from the document. The document shall be titled to show that it corresponds
2 to an item filed under seal, *e.g.*, “Redacted Copy of Sealed Declaration of John Smith
3 in Support of Motion for Summary Judgment.” The sealed and redacted documents
4 shall be filed simultaneously.

5 14. If the need arises during trial or at any hearing before the Court for any
6 party to disclose Confidential, it may do so only after giving notice to the designating
7 party and as directed by the Court.

8 15. To the extent consistent with applicable law, the inadvertent or
9 unintentional disclosure of Confidential Material that should have been designated as
10 such, regardless of whether the information, document or thing was so designated at
11 the time of disclosure, shall not be deemed a waiver in whole or in part of a party’s
12 claim of confidentiality, either as to the specific information, document or thing
13 disclosed or as to any other material or information concerning the same or related
14 subject matter. Such inadvertent or unintentional disclosure may be rectified by
15 notifying in writing counsel for all parties to whom the material was disclosed that the
16 material should have been designated Confidential within a reasonable time after
17 disclosure. Such notice shall constitute a designation of the information, document or
18 thing as Confidential Material under this Order.

19 16. When the inadvertent or mistaken disclosure of any information,
20 document or thing protected by privilege or work-product immunity is discovered by
21 the designating party and brought to the attention of the receiving party, the receiving
22 party’s treatment of such material shall be in accordance with Federal Rule of Civil
23 Procedure 26(b)(5)(B). Such inadvertent or mistaken disclosure of such information,
24 document or thing shall not by itself constitute a waiver by the designating party of
25 any claims of privilege or work-product immunity. However, nothing herein restricts
26 the right of the receiving party to challenge the designating party’s claim of privilege
27 if appropriate within a reasonable time after receiving notice of the inadvertent or
28 mistaken disclosure.

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18 DENIS GOBEILLE,
19 Plaintiff,

20 v.

21 UPS CARTAGE SERVICES, INC., a
22 Delaware corporation, and DOES 1-10,
23 inclusive,

24 Defendants.

Case No. 13-cv-02346-JFW (RZx)

**AGREEMENT TO COMPLY WITH
PROTECTIVE ORDER**

Magistrate Judge: Hon. Ralph Zarefsky
Courtroom: 540

Complaint Filed: December 21, 2012
Trial Date: February 4, 2014

[DISCOVERY MATTER]

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I, _____, being duly sworn, state that:

1. My address is

_____.

2. My present employer is _____ and the address of my present employment is

_____.

3. My present occupation or job description is

_____.

4. I have carefully read and understood the provisions of the Protective Order in this case signed by the Court, and I will comply with all provisions of that order.

5. I will hold in confidence and not disclose to anyone not qualified under the Order any Confidential Material or any words, summaries, abstracts, or indices of Confidential Information disclosed to me.

6. I will limit use of Confidential Material disclosed to me solely for the purposes of this action.

7. No later than the final conclusion of the case, I will return all Confidential Material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____, 20____

Name: