

1 **MLG AUTOMOTIVE LAW, APLC**
A Professional Law Corporation
2 Jonathan A. Michaels, Esq. – State Bar No. 180455
Kathryn J. Harvey, Esq. – State Bar No. 241029
3 Kianna C. Parviz, Esq. – State Bar No. 293568
2801 W. Coast Highway, Suite 370
4 Newport Beach, CA 92663
Telephone: (949) 581-6900
5 Facsimile: (949) 581-6908
6 (jmichaels@mlgautomotivelaw.com)
(kharvey@mlgautomotivelaw.com)
7 (kparviz@mlgautomotivelaw.com)

8 Attorneys for Plaintiff,
9 Material Handling Supply, Inc.

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

13 MATERIAL HANDLING SUPPLY,
14 INC., a California corporation,

15 Plaintiff,

16 vs.
17

18 UNICARRIERS AMERICAS
19 CORPORATION, an Illinois
corporation; SELECT EQUIPMENT
20 SALES, INC., a California
21 corporation; and DOES 1 through 25,
22 inclusive,

23 Defendants.
24

Case No: 2:14-cv-01973-FMO-VBK
Judge: Fernando M. Olguin

**~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER**

Action Removed: March 14, 2014

Trial Date: October 27, 2015

1 Plaintiff Material Handling Supply (“Plaintiff”) and Defendant
2 Unicarriers Americas Corporation (“Defendant”) through their undersigned
3 counsel, stipulate as follows:
4

5 **1. PURPOSES AND LIMITATIONS**

6 Discovery in this action is likely to involve production of confidential,
7 proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may
9 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
10 to enter the following Stipulated Protective Order. The parties acknowledge that
11 this Order does not confer blanket protections on all disclosures or responses to
12 discovery and that the protection it affords from public disclosure and use extends
13 only to the limited information or items that are entitled to confidential treatment
14 under the applicable legal principles. The parties further acknowledge, as set forth
15 in Section 13.3, below, that this Stipulated Protective Order does not entitle them
16 to file confidential information under seal. Instead, Civil Local Rule 79-5 sets
17 forth the procedures that must be followed and the standards that will be applied
18 when a party seeks permission from the Court to file material under seal.
19

20 **2. GOOD CAUSE STATEMENT**

21 This action is likely to involve trade secrets and other valuable research,
22 development, commercial, financial, technical and/or proprietary information for
23 which special protection from public disclosure and from use for any purpose
24 other than prosecution of this action is warranted. Such confidential and
25 proprietary materials and information consist of, among other things, confidential
26 business or financial information, information regarding confidential business
27 practices, or other confidential research, development, or commercial information
28 (including information implicating privacy rights of third parties), information

1 otherwise generally unavailable to the public, or which may be privileged or
2 otherwise protected from disclosure under state or federal statutes, court rules,
3 case decisions, or common law. Accordingly, to expedite the flow of information,
4 to facilitate the prompt resolution of disputes over confidentiality of discovery
5 materials, to adequately protect information the parties are entitled to keep
6 confidential, to ensure that the parties are permitted reasonable necessary uses of
7 such material in preparation for and in the conduct of trial, to address their
8 handling at the end of the litigation, and serve the ends of justice, a protective
9 order for such information is justified in this matter. It is the intent of the parties
10 that information will not be designated as confidential for tactical reasons and that
11 nothing be so designated without a good faith belief that it has been maintained in
12 a confidential, non-public manner, and there is good cause why it should not be
13 part of the public record of this case.

14
15 **3. DEFINITIONS**

16 3.1 Action: This pending federal law suit.

17 3.2 Challenging Party: A Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 3.3 “CONFIDENTIAL” Information or Items: Information (regardless
20 of how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
22 the Good Cause Statement.

23 3.4 Counsel: Outside Counsel of Record and House Counsel (as well as
24 their support staff).

25 3.5 Designating Party: A Party or Non-Party that designates information
26 or items that it produces in disclosures or in responses to discovery as
27 “CONFIDENTIAL.”

28

1 3.6 Disclosure or Discovery Material: All items or information,
2 regardless of the medium or manner in which it is generated, stored, or maintained
3 (including, among other things, testimony, transcripts, and tangible things), that
4 are produced or generated in disclosures or responses to discovery in this matter.

5 3.7 Expert: A person with specialized knowledge or experience in a
6 matter pertinent to the litigation who has been retained by a Party or its counsel to
7 serve as an expert witness or as a consultant in this Action.

8 3.8 “HIGHLY CONFIDENTIAL” Information or Items: Extremely
9 sensitive “CONFIDENTIAL” information or items whose disclosure to another
10 Party or Non-Party would create a substantial risk of serious injury that could not
11 be avoided by less restrictive means. This definition includes: (1) material which
12 has not been made public and which is protected from disclosure by federal or
13 state constitutional, statutory and common law, including, but not limited to,
14 rights of privacy of the parties to this stipulation and of third parties; and (2) any
15 confidential material that constitutes or refers to trade secrets, other highly
16 sensitive information of a competitive or financial nature, or individual personal
17 information from employee files.

18 3.9 House Counsel: Attorneys who are employees of a party to this
19 Action. House Counsel does not include Outside Counsel of Record or any other
20 outside counsel.

21 3.10 Non-Party: Any natural person, partnership, corporation, association,
22 or other legal entity not named as a Party to this action.

23 3.11 Outside Counsel of Record: Attorneys who are not employees of a
24 Party to this Action but are retained to represent or advise a Party to this Action
25 and have appeared in this Action on behalf of that Party or are affiliated with a
26 law firm which has appeared on behalf of that Party, and includes support staff.

27
28

1 3.12 Party: Any party to this Action, including all of its officers,
2 directors, employees, consultants, retained experts, and Outside Counsel of
3 Record (and their support staffs).

4 3.13 Producing Party: A Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 3.14 Professional Vendors: Persons or entities that provide litigation
7 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits
8 or demonstrations, and organizing, storing, or retrieving data in any form or
9 medium) and their employees and subcontractors.

10 3.15 Protected Material: Any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

12 3.16 Receiving Party: A Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14
15 **4. SCOPE**

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.

21 Any use of Protected Material at trial shall be governed by the orders of the
22 trial judge. This Order does not govern the use of Protected Material at trial.

23
24 **5. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of: (1) dismissal of all claims and defenses in this Action,

1 with or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
3 including the time limits for filing any motions or applications for extension of
4 time pursuant to applicable law.

5
6 **6. DESIGNATING PROTECTED MATERIAL**

7 6.1 Exercise of Restraint and Care in Designating Material for
8 Protection. Each Party or Non-Party that designates information or items for
9 protection under this Order must take care to limit any such designation to specific
10 material that qualifies under the appropriate standards. The Designating Party
11 must designate for protection only those parts of material, documents, items, or
12 oral or written communications that qualify so that other portions of the material,
13 documents, items, or communications for which protection is not warranted are
14 not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited.
16 Designations that are shown to be clearly unjustified or that have been made for
17 an improper purpose (*e.g.*, to unnecessarily encumber the case development
18 process or to impose unnecessary expenses and burdens on other parties) may
19 expose the Designating Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that
21 it designated for protection do not qualify for protection that Designating Party
22 must promptly notify all other Parties that it is withdrawing the inapplicable
23 designation.

24 6.2 Manner and Timing of Designations. Except as otherwise provided
25 in this Order (*see, e.g.*, second paragraph of Section 6.2(a) below), or as otherwise
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for
27 protection under this Order must be clearly so designated before the material is
28 disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (*e.g.*, paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix at a minimum, the legend
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” to each page that
6 contains protected material. If only a portion or portions of the material on
7 a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (*e.g.*, by making appropriate markings in
9 the margins).

10 A Party or Non-Party that makes original documents available for
11 inspection need not designate them for protection until after the inspecting
12 Party has indicated which documents it would like copied and produced.
13 During the inspection and before the designation, all of the material made
14 available for inspection shall be deemed “HIGHLY CONFIDENTIAL.”
15 After the inspecting Party has identified the documents it wants copied and
16 produced, the Producing Party must determine which documents, or
17 portions thereof, qualify for protection under this Order. Then, before
18 producing the specified documents, the Producing Party must affix the
19 appropriate legend (either “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL”) to each page that contains Protected Material. If only a
21 portion or portions of the material on a page qualifies for protection, the
22 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by
23 making appropriate markings in the margins).

24 (b) for testimony given in depositions, that the Designating Party
25 identify the Disclosure or Discovery Material on the record, before the
26 close of the deposition, and further specify any portions that qualify as
27 “HIGHLY CONFIDENTIAL.”
28

1 (c) for information produced in some form other than documentary
2 and for any other tangible items, that the Producing Party affix in a
3 prominent place on the exterior of the container or containers in which the
4 information is stored the legend “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL.” If only a portion or portions of the information
6 warrants protection, the Producing Party, to the extent practicable, shall
7 identify the protected portion(s).

8 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the Designating Party’s right to secure protection under this Order for such
11 material. Upon timely correction of a designation, the Receiving Party must make
12 reasonable efforts to assure that the material is treated in accordance with the
13 provisions of this Order.

14
15 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court’s
18 Scheduling Order.

19 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37.1, *et seq.*

21 7.3 The burden of persuasion in any such challenge proceeding shall be
22 on the Designating Party. Frivolous challenges, and those made for an improper
23 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
24 parties) may expose the Challenging Party to sanctions. Unless the Designating
25 Party has waived or withdrawn the confidentiality designation, all parties shall
26 continue to afford the material in question the level of protection to which it is
27 entitled under the Producing Party’s designation until the Court rules on the
28 challenge.

1 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 8.1 Basic Principles. A Receiving Party may use Protected Material that
3 is disclosed or produced by another Party or by a Non-Party in connection with
4 this Action only for prosecuting, defending, or attempting to settle this Action.
5 Such Protected Material may be disclosed only to the categories of persons and
6 under the conditions described in this Order. When the Action has been
7 terminated, a Receiving Party must comply with the provisions of Section 14
8 below (FINAL DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the Court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this Action,
17 as well as employees of said Outside Counsel of Record to whom it is
18 reasonably necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including House Counsel)
20 of the Receiving Party to whom disclosure is reasonably necessary for this
21 Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to
23 whom disclosure is reasonably necessary for this Action and who have
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and
28 Professional Vendors to whom disclosure is reasonably necessary for this

1 Action and who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 (g) the author or recipient of a document containing the information
4 or a custodian or other person who otherwise possessed or knew the
5 information, including those who received or reviewed the information
6 prior to its production in this lawsuit;

7 (h) third-party witnesses at any deposition, hearing, or trial in this
8 litigation to the extent they need knowledge of the particular confidential
9 information for purposes of their testimony and/or preparation therefore,
10 provided they have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A), and

12 (i) any mediator or settlement officer, and their supporting
13 personnel, mutually agreed upon by any of the parties engaged in settlement
14 discussions.

15 8.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items:

16 Unless otherwise ordered by the Court or permitted in writing by the Designating
17 Party, a Receiving Party may disclose any information or item designated
18 “HIGHLY CONFIDENTIAL” only to:

19 (a) the Receiving Party’s Outside Counsel of record in this action,
20 as well as employees of said Counsel to whom it is reasonably necessary to
21 disclose the information for this Action;

22 (b) the Receiving Party’s House Counsel;

23 (c) Experts (as defined in this Order): (1) to whom disclosure is
24 reasonably necessary for this litigation; and (2) who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (d) the Court and its personnel;

27
28

1 (e) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation and who have signed
3 the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

4 (f) the author of the document or the original source of the
5 information, including those who received or reviewed the information prior to its
6 production in this lawsuit.

7
8 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
9 **PRODUCED IN OTHER LITIGATION**

10 If a Party is served with a subpoena or a court order issued in other
11 litigation that compels disclosure of any information or items designated in this
12 Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such
14 notification shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered
17 by the subpoena or order is subject to this Protective Order. Such
18 notification shall include a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be
21 affected.

22 If the Designating Party timely seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated in
24 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a
25 determination by the court from which the subpoena or order issued, unless the
26 Party has obtained the Designating Party’s permission. The Designating Party
27 shall bear the burden and expense of seeking protection in that court of its
28 confidential material and nothing in these provisions should be construed as

1 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
2 directive from another court.

3
4 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
5 **PRODUCED IN THIS LITIGATION**

6 The terms of this Order are applicable to information produced by a Non-
7 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL.” Such information produced by Non-Parties in connection
9 with this litigation is protected by the remedies and relief provided by this Order.
10 Nothing in these provisions should be construed as prohibiting a Non-Party from
11 seeking additional protections.

12 In the event that a Party is required, by a valid discovery request, to produce
13 a Non-Party’s confidential information in its possession, and the Party is subject
14 to an agreement with the Non-Party not to produce the Non-Party’s confidential
15 information, then the Party shall:

16 (a) promptly notify in writing the Requesting Party and the Non-
17 Party that some or all of the information requested is subject to a
18 confidentiality agreement with a Non-Party;

19 (b) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this Action, the relevant discovery request(s), and a
21 reasonably specific description of the information requested; and

22 (c) make the information requested available for inspection by the
23 Non-Party, if requested.

24 If the Non-Party fails to seek a protective order from this Court within 14
25 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party’s confidential information responsive to the discovery
27 request. If the Non-Party timely seeks a protective order, the Receiving Party
28 shall not produce any information in its possession or control that is subject to the

1 confidentiality agreement with the Non-Party before a determination by the Court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and
3 expense of seeking protection in this court of its Protected Material.
4

5 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has
7 disclosed Protected Material to any person or in any circumstance not authorized
8 under this Stipulated Protective Order, the Receiving Party must immediately: (a)
9 notify in writing the Designating Party of the unauthorized disclosures; (b) use its
10 best efforts to retrieve all unauthorized copies of the Protected Material; (c)
11 inform the person or persons to whom unauthorized disclosures were made of all
12 the terms of this Order; and (d) request such person or persons to execute the
13 “Acknowledgment and Agreement to Be Bound” attached hereto as Exhibit A.
14

15 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR**
16 **OTHERWISE PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other
19 protection, the obligations of the Receiving Parties are those set forth in Federal
20 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
21 whatever procedure may be established in an e-discovery order that provides for
22 production without prior privilege review.
23

24 **13. MISCELLANEOUS**

25 13.1 Right to Further Relief. Nothing in this Order abridges the right of
26 any person to seek its modification by the Court in the future.

27 13.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order, no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in
2 this Stipulated Protective Order. Similarly, no Party waives any right to object on
3 any ground to use in evidence of any of the material covered by this Protective
4 Order.

5 13.3 Filing Protected Material. A Party that seeks to file under seal any
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material
7 may only be filed under seal pursuant to a court order authorizing the sealing of
8 the specific Protected Material at issue. If a Party's request to file Protected
9 Material under seal is denied by the Court, then the Receiving Party may file the
10 information in the public record unless otherwise instructed by the Court.

11
12 **14. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in Section 5
14 (DURATION), within 60 days of a written request by the Designating Party, each
15 Receiving Party must return all Protected Material to the Producing Party or
16 destroy such material. As used in this subdivision, "all Protected Material"
17 includes all copies, abstracts, compilations, summaries, and any other format
18 reproducing or capturing any of the Protected Material. Whether the Protected
19 Material is returned or destroyed, the Receiving Party must submit a written
20 certification to the Producing Party (and, if not the same person or entity, to the
21 Designating Party) by the 60 day deadline that (1) identifies (by category, where
22 appropriate) all the Protected Material that was returned or destroyed and (2)
23 affirms that the Receiving Party has not retained any copies, abstracts,
24 compilations, summaries or any other format reproducing or capturing any of the
25 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
26 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
27 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
28 reports, attorney work product, and consultant and expert work product, even if

1 such materials contain Protected Material. Any such archival copies that contain
2 or constitute Protected Material remain subject to this Protective Order as set forth
3 in Section 5 (DURATION).

4
5 **15. VIOLATION OF THIS ORDER**

6 Any violation of this Order may be punished by any and all appropriate
7 measures including, without limitation, contempt proceedings and/or monetary
8 sanctions.

9
10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11
12 **MLG AUTOMOTIVE LAW, APLC**

13 Dated: April 14, 2015

14 By: /s/ Kathryn J. Harvey
15 Jonathan A. Michaels, Esq.
16 Kathryn J. Harvey, Esq.
17 Attorneys for Plaintiff Material
18 Handling Supply, Inc.

19 **HARTLINE DACUS BARGER**
20 **DREYER LLP**
21 **LARSON, GARRICK &**
22 **LIGHTFOOT, LLP**

23 Dated: April 14, 2015

24 By: /s/ Adrienne N. Russell
25 Jeffrey S. Patterson, Esq.
26 Adrienne N. Russell, Esq.
27 Drew Larson, Esq.
28 Attorneys for Defendant UniCarriers
Americas Corporation

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of
7 California on [date] in the case of *Material Handling Supply, Inc. v. Unicarriers*
8 *Americas Corporation*, 2:14-CV-01973-FMO-VBK. I agree to comply with and
9 to be bound by all the terms of this Stipulated Protective Order and I understand
10 and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose
12 in any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of
14 this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms
17 of this Stipulated Protective Order, even if such enforcement proceedings occur
18 after termination of this Action. I hereby appoint _____
19 [print or type full name] of _____ [print
20 or type full address and telephone number] as my California agent for service of
21 process in connection with this action or any proceedings related to enforcement
22 of this Stipulated Protective Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27
28 Signature: _____