

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Carlos Marsh,
Plaintiff,

v.
**Los Angeles Department of
Transportation; MV
Transportation, Inc.;** and Does 1-
10, Inclusive,

Defendants.

Case No. CV 15-6551-GW(PJWx)
DISCOVERY MATTER

Protective Order

By agreement of the parties hereto, pursuant to the Joint Stipulation filed concurrently herewith, and for good cause shown, it is hereby ORDERED:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this

1 litigation may be warranted. Accordingly, the parties hereby stipulate to
2 and petition the Court to enter the following Stipulated Protective Order.
3 The parties acknowledge that this Order does not confer blanket
4 protections on all disclosures or responses to discovery and that the
5 protection it affords from public disclosure and use extends only to the
6 limited information or items that are entitled to confidential treatment under
7 the applicable legal principles. The parties further acknowledge, as set
8 forth in Section 12.3, below, that this Stipulated Protective Order does not
9 entitle them to file confidential information under seal; Civil Local Rule 79-5
10 sets forth the procedures that must be followed and the standards that will
11 be applied when a party seeks permission from the court to file material
12 under seal.

13
14 **B. GOOD CAUSE STATEMENT**

15
16 This action is likely to involve information: (1) regarding or relating to
17 the medical condition or ability of Plaintiff Carlos Marsh; and (2) regarding
18 or relating to the contents of Defendants' employee personnel files.
19 Special protection from public disclosure and from use for any purpose
20 other than prosecution of this action is warranted. Such confidential
21 materials and information consist of, among other things, medical records,
22 summaries and information; disciplinary records, summaries and
23 information; and information otherwise generally unavailable to the public,
24 or which may be privileged or otherwise protected from disclosure under
25 state or federal statutes, court rules, case decisions, or common law.
26 Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the parties are entitled to keep confidential,

1 to ensure that the parties are permitted reasonable necessary uses of such
2 material in preparation for and in the conduct of trial, to address their
3 handling at the end of the litigation, and serve the ends of justice, a
4 protective order for such information is justified in this matter. It is the intent
5 of the parties that information will not be designated as confidential for
6 tactical reasons and that nothing be so designated without a good faith
7 belief that it has been maintained in a confidential, non-public manner, and
8 there is good cause why it should not be part of the public record of this
9 case.

10
11
12 **2. DEFINITIONS**

13 2.1 Action: the federal lawsuit filed by Plaintiff Carlos Marsh
14 against Los Angeles Department of Transportation; MV Transportation,
15 Inc.; on August 27, 2015 in the Central District of California and reflecting
16 case number 2:15-cv-06551-GW-PJW.

17 2.2 Challenging Party: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: information
20 (regardless of how it is generated, stored or maintained) or tangible things
21 that qualify for protection under Federal Rule of Civil Procedure 26(c), and
22 as specified above in the Good Cause Statement.

23 2.4 Counsel: Outside Counsel of Record and House Counsel (as
24 well as their support staff).

25 2.5 Designating Party: a Party or Non-Party that designates
26 information or items that it produces in disclosures or in responses to
27 discovery as “CONFIDENTIAL.”
28

1 2.6 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner in which it is generated, stored, or
3 maintained (including, among other things, testimony, transcripts, and
4 tangible things), that are produced or generated in disclosures or
5 responses to discovery in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in
7 a matter pertinent to the litigation who has been retained by a Party or its
8 counsel to serve as an expert witness or as a consultant in this Action.

9 2.8 House Counsel: attorneys who are employees of a party to
10 this Action. House Counsel does not include Outside Counsel of Record or
11 any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation,
13 association, or other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees
15 of a party to this Action but are retained to represent or advise a party to
16 this Action and have appeared in this Action on behalf of that party or are
17 affiliated with a law firm which has appeared on behalf of that party, and
18 includes support staff.

19 2.11 Party: any party to this Action, including all of its officers,
20 directors, employees, consultants, retained experts, and Outside Counsel
21 of Record (and their support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces
23 Disclosure or Discovery Material in this Action.

24 2.13 Professional Vendors: persons or entities that provide litigation
25 support services (e.g., photocopying, videotaping, translating, preparing
26 exhibits or demonstrations, and organizing, storing, or retrieving data in
27 any form or medium) and their employees and subcontractors.

28

1 2.14 Protected Material: any Disclosure or Discovery Material that
2 is designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5
6
7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not
9 only

10 Protected Material (as defined above), but also (1) any information copied
11 or extracted from Protected Material; (2) all copies, excerpts, summaries,
12 or compilations of Protected Material; and (3) any testimony,
13 conversations, or presentations by Parties or their Counsel that might
14 reveal Protected Material.

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

18
19
20 4. DURATION

21 Once a case proceeds to trial, all of the information that was
22 designated as confidential or maintained pursuant to this protective order
23 becomes public and will be presumptively available to all members of the
24 public, including the press, unless compelling reasons supported by
25 specific factual findings to proceed otherwise are made to the trial judge in
26 advance of the trial. See Kamakana v. City and County of Honolulu, 447
27 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing
28 for sealing documents produced in discovery from “compelling reasons”

1 standard when merits-related documents are part of court record).
2 Accordingly, the terms of this protective order do not extend beyond the
3 commencement of the trial.
4

5
6
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
10 for protection under this Order must take care to limit any such designation
11 to specific material that qualifies under the appropriate standards. The
12 Designating Party must designate for protection only those parts of
13 material, documents, items, or oral or written communications that qualify
14 so that other portions of the material, documents, items, or
15 communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

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

22 If it comes to a Designating Party's attention that information or
23 items that it designated for protection do not qualify for protection, that
24 Designating Party must promptly notify all other Parties that it is
25 withdrawing the inapplicable designation.
26

27 **5.2 Manner and Timing of Designations**. Except as otherwise
28 provided in this Order (see, e.g., second paragraph of section 5.2(a)

1 below), or as otherwise stipulated or ordered, Disclosure or Discovery
2 Material that qualifies for protection under this Order must be clearly so
3 designated before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

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

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

26 (b) for testimony given in depositions that the Designating Party
27 identify the Disclosure or Discovery Material on the record, before the
28 close of the deposition all protected testimony.

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

7 5.3 Inadvertent Failures to Designate. If timely corrected, an
8 inadvertent failure to designate qualified information or items does not,
9 standing alone, waive the Designating Party's right to secure protection
10 under this Order for such material. Upon timely correction of a designation,
11 the Receiving Party must make reasonable efforts to assure that the
12 material is treated in accordance with the provisions of this Order.
13
14

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge
17 a designation of confidentiality at any time that is consistent with the
18 Court's Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the
20 dispute resolution process under Local Rule 37.1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding
22 shall be on the Designating Party. Frivolous challenges, and those made
23 for an improper purpose (e.g., to harass or impose unnecessary expenses
24 and burdens on other parties) may expose the Challenging Party to
25 sanctions. Unless the Designating Party has waived or withdrawn the
26 confidentiality designation, all parties shall continue to afford the material in
27 question the level of protection to which it is entitled under the Producing
28 Party's designation until the Court rules on the challenge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

7.2 Disclosure of “CONFIDENTIAL” 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 “CONFIDENTIAL” only to:

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

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

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

(d) the court and its personnel;

(e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and
2 Professional Vendors to whom disclosure is reasonably necessary for this
3 Action and who have signed the “Acknowledgment and Agreement to Be
4 Bound” (Exhibit A);

5 (g) the author or recipient of a document containing the
6 information or a custodian or other person who otherwise possessed or
7 knew the information;

8 (h) during their depositions, witnesses, and attorneys for
9 witnesses, in the Action to whom disclosure is reasonably necessary
10 provided: (1) the deposing party requests that the witness sign the form
11 attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any
12 confidential information unless they sign the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
14 Designating Party or ordered by the court. Pages of transcribed deposition
15 testimony or exhibits to depositions that reveal Protected Material may be
16 separately bound by the court reporter and may not be disclosed to
17 anyone except as permitted under this Stipulated Protective Order; and

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

21
22
23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
24 **PRODUCED IN OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other
26 litigation that compels disclosure of any information or items designated in
27 this Action as “CONFIDENTIAL,” that Party must:
28

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

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

7 (c) cooperate with respect to all reasonable procedures sought
8 to be pursued by the Designating Party whose Protected Material may be
9 affected. If the Designating Party timely seeks a protective order, the Party
10 served with the subpoena or court order shall not produce any information
11 designated in this action as "CONFIDENTIAL" before a determination by
12 the court from which the subpoena or order issued, unless the Party has
13 obtained the Designating Party's permission. The Designating Party shall
14 bear the burden and expense of seeking protection in that court of its
15 confidential material and nothing in these provisions should be construed
16 as authorizing or encouraging a Receiving Party in this Action to disobey a
17 lawful directive from another court.

18
19
20 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
21 PRODUCED IN THIS LITIGATION

22 (a) The terms of this Order are applicable to information
23 produced by a Non-Party in this Action and designated as
24 "CONFIDENTIAL." Such information produced by Non-Parties in
25 connection with this litigation is protected by the remedies and relief
26 provided by this Order. Nothing in these provisions should be construed as
27 prohibiting a Non-Party from seeking additional protections.

28

1 (b) In the event that a Party is required, by a valid discovery
2 request, to produce a Non-Party's confidential information in its
3 possession, and the Party is subject to an agreement with the Non-Party
4 not to produce the Non-Party's confidential information, then the Party
5 shall:

6 (1) promptly notify in writing the Requesting Party and the
7 Non-Party that some or all of the information requested is subject to a
8 confidentiality agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the
10 Stipulated Protective Order in this Action, the relevant discovery
11 request(s), and a reasonably specific description of the information
12 requested; and

13 (3) make the information requested available for inspection
14 by the Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this
16 court within 14 days of receiving the notice and accompanying information,
17 the Receiving Party may produce the Non-Party's confidential information
18 responsive to the discovery request. If the Non-Party timely seeks a
19 protective order, the Receiving Party shall not produce any information in
20 its possession or control that is subject to the confidentiality agreement
21 with the Non-Party before a determination by the court. Absent a court
22 order to the contrary, the Non-Party shall bear the burden and expense of
23 seeking protection in this court of its Protected Material.

24
25
26 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has
28 disclosed Protected Material to any person or in any circumstance not

1 authorized under this Stipulated Protective Order, the Receiving Party
2 must immediately (a) notify in writing the Designating Party of the
3 unauthorized disclosures, (b) use its best efforts to retrieve all
4 unauthorized copies of the Protected Material, (c) inform the person or
5 persons to whom unauthorized disclosures were made of all the terms of
6 this Order, and (d) request such person or persons to execute the
7 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
8 Exhibit A.

9
10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that
13 certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in
16 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
17 to modify whatever procedure may be established in an e-discovery order
18 that provides for production without prior privilege review. Pursuant to
19 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
20 agreement on the effect of disclosure of a communication or information
21 covered by the attorney-client privilege or work product protection, the
22 parties may incorporate their agreement in the stipulated protective order
23 submitted to the court.

24
25
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 12.2 Right to Assert Other Objections. By stipulating to the entry of
2 this Protective Order no Party waives any right it otherwise would have to
3 object to disclosing or producing any information or item on any ground not
4 addressed in this Stipulated Protective Order. Similarly, no Party waives
5 any right to object on any ground to use in evidence of any of the material
6 covered by this Protective Order.

7 12.3 Filing Protected Material. A Party that seeks to file under seal
8 any Protected Material must comply with Civil Local Rule 79-5. Protected
9 Material may only be filed under seal pursuant to a court order authorizing
10 the sealing of the specific Protected Material at issue. If a Party's request
11 to file Protected Material under seal is denied by the court, then the
12 Receiving Party may file the information in the public record unless
13 otherwise instructed by the court.

14
15
16 13. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 4,
18 within 60 days of a written request by the Designating Party, each
19 Receiving Party must return all Protected Material to the Producing Party
20 or destroy such material. As used in this subdivision, "all Protected
21 Material" includes all copies, abstracts, compilations, summaries, and any
22 other format reproducing or capturing any of the Protected Material.
23 Whether the Protected Material is returned or destroyed, the Receiving
24 Party must submit a written certification to the Producing Party (and, if not
25 the same person or entity, to the Designating Party) by the 60 day deadline
26 that (1) identifies
27 (by category, where appropriate) all the Protected Material that was
28 returned or destroyed and (2) affirms that the Receiving Party has not

1 retained any copies, abstracts, compilations, summaries or any other
2 format reproducing or capturing any of the Protected Material.
3 Notwithstanding this provision, Counsel are entitled to retain an archival
4 copy of all pleadings, motion papers, trial, deposition, and hearing
5 transcripts, legal memoranda, correspondence, deposition and trial
6 exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain Protected Material. Any such
8 archival copies that contain or constitute Protected Material remain subject
9 to this Protective Order as set forth in Section 4 (DURATION).

10
11 14. Any violation of this Order may be punished by any and all
12 appropriate measures including, without limitation, contempt proceedings
13 and/or monetary sanctions.

14
15
16 DATED: November 9, 2015



17
18 Hon. Patrick J. Walsh
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District
Court for the Central District of California on _____ in the case of Carlos
Marsh v. Los Angeles Department of Transportation and MV
Transportation, Inc., Case No.: 2:15-cv-06551-GW-PJW. I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose
me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that
is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

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

1 this action or any proceedings related to enforcement of this Stipulated
2 Protective Order.

3

4 Date: _____

5 City and State where sworn and signed:

6 _____

7 Printed name: _____

8 Signature: _____

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28