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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DENISE MURTAUGH,

Plaintiff,

v.

NATIONAL RAILROAD
PASSENGER CORPORATION, et. al.

Defendants,

Case No.: 2:15-cv-09369

**[PROPOSED] PROTECTIVE
ORDER**

[Discovery Document: referred to
Mag. Judge Kenly Kiya Kato]

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.
15

16 **B. GOOD CAUSE STATEMENT**

17 Good cause exists for a Protective Order in this action because, among some
18 other items, Plaintiffs production of documents relating to the disciplinary records
19 of other current and former employees at Defendant's Union Station location.
20 Further, this action is likely to involve some trade secrets, some customer/
21 passenger lists and/or identification, other private and valuable commercial and/or
22 proprietary information, and identification of current or employees' names and/or
23 disciplinary records for which special protection from public disclosure and `from
24 use for any purpose other than prosecution and defense of this action is warranted.
25 Such confidential and proprietary materials and information consist of, among
26 other things, confidential business or financial information, information regarding
27 confidential business practices, or other confidential research, development, or
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1 commercial information (including information implicating privacy rights of third
2 parties, including but not limited to current and former employees and/or
3 customers/passengers), information otherwise generally unavailable to the public,
4 or which may be privileged or otherwise protected from disclosure under state or
5 federal statutes, court rules, case decisions, or common law.
6

7 Accordingly, to expedite the flow of information, to facilitate the prompt
8 resolution of disputes over confidentiality of discovery materials, to adequately
9 protect information the parties are entitled to keep confidential, to ensure that the
10 parties are permitted reasonable necessary uses of such material in preparation for
11 and in the conduct of trial, to address their handling at the end of the litigation, and
12 serve the ends of justice, a protective order for such information is justified in this
13 matter. It is the intent of the parties that information will not be designated as
14 confidential for tactical reasons and that nothing be so designated without a good
15 faith belief that it has been maintained in a confidential, non-public manner, and
16 there is good cause why it should not be part of the public record of this case.
17

18 **2. DEFINITIONS**

19 2.1 Action: *Denise Murtaugh v. National Railroad Passenger*
20 *Corporation*, Case No. 2:15-cv-09369-DMG-KK (C.D. California).

21 2.2 Challenging Party: a Party or Non-Party that challenges the
22 designation of information or items under this Order.

23 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for
25 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
26 the Good Cause Statement.

27 2.4 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information or
28 Items: extremely sensitive “Confidential Information or Items,” disclosure of

1 which to another Party or Non-Party would create a substantial risk of serious harm
2 that could not be avoided by less restrictive means. With respect to the
3 disciplinary records of Defendant's current or former employees (other than
4 Plaintiff Denise Murtaugh), Plaintiff's attorney, to whom the information or items
5 designated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" are being
6 produced, is expressly prohibited from disclosing the information or items
7 designated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to Plaintiff
8 Denise Murtaugh, Plaintiff's son (Mark Gibson), Plaintiff's daughter (Ashley
9 Gibson) or any other family member related to Plaintiff.
10

11 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 2.6 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."
16

17 2.7 Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced
20 or generated in disclosures or responses to discovery in this matter.

21 2.8 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve
23 as an expert witness or as a consultant in this Action.

24 2.9 House Counsel: attorneys who are employees of a party to this Action.
25 House Counsel does not include Outside Counsel of Record or any other outside
26 counsel.

27 2.10 Non-Party: any natural person, partnership, corporation, association,
28 or other legal entity not named as a Party to this action.

1 2.11 Outside Counsel of Record: attorneys who are not employees of a
2 party to this Action but are retained to represent or advise a party to this Action
3 and have appeared in this Action on behalf of that party or are affiliated with a law
4 firm which has appeared on behalf of that party, and includes support staff.
5

6 2.12 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).

9 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

11 2.14 Professional Vendors: persons or entities that provide litigation
12 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
13 demonstrations, and organizing, storing, or retrieving data in any form or medium)
14 and their employees and subcontractors.

15 2.15 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY.”

18 2.16 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.
20

21 **3. SCOPE**

22 The protections conferred by this Stipulation and Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or
24 extracted from Protected Material; (2) all copies, excerpts, summaries, or
25 compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material.
27 Any use of Protected Material at trial shall be governed by the orders of the
28 trial judge. This Order does not govern the use of Protected Material at trial.

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order
5 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal
6 of all claims and defenses in this Action, with or without prejudice; and (2) final
7 judgment herein after the completion and exhaustion of all appeals, rehearings,
8 remands, trials, or reviews of this Action, including the time limits for filing any
9 motions or applications for extension of time pursuant to applicable law.
10

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection
14 under this Order must take care to limit any such designation to specific material
15 that qualifies under the appropriate standards. The Designating Party must
16 designate for protection only those parts of material, documents, items, or oral or
17 written communications that qualify so that other portions of the material,
18 documents, items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
20 routinized designations are prohibited. Designations that are shown to be clearly
21 unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
22 encumber the case development process or to impose unnecessary expenses and
23 burdens on other parties) may expose the Designating Party to sanctions.
24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.
27
28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.
6

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (*e.g.*, paper or electronic
9 documents, but excluding transcripts of depositions or other pretrial or trial
10 proceedings), that the Producing Party affix at a minimum, the legend
11 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 (hereinafter “CONFIDENTIAL legend” or “CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY” legend), to each page that contains protected material. If only a
14 portion or portions of the material on a page qualifies for protection, the Producing
15 Party also must clearly identify the protected portion(s) (*e.g.*, by making
16 appropriate markings in the margins).
17

18 A Party or Non-Party that makes original documents available for inspection
19 need not designate them for protection until after the inspecting Party has indicated
20 which documents it would like copied and produced. During the inspection and
21 before the designation, all of the material made available for inspection shall be
22 deemed “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY.” After the inspecting Party has identified the documents it wants copied
24 and produced, the Producing Party must determine which documents, or portions
25 thereof, qualify for protection under this Order. Then, before producing the
26 specified documents, the Producing Party must affix the “CONFIDENTIAL
27 legend” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to each
28 page that contains Protected Material. If only a portion or portions of the material

1 on a page qualifies for protection, the Producing Party also must clearly identify
2 the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

3
4 (b) for testimony given in depositions that the Designating Party identify
5 the Disclosure or Discovery Material on the record, before the close of the
6 deposition all protected testimony.

7 (c) for information produced in some form other than documentary and
8 for any other tangible items, that the Producing Party affix in a prominent place on
9 the exterior of the container or containers in which the information is stored the
10 legend “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY.” If only a portion or portions of the information warrants protection, the
12 Producing Party, to the extent practicable, shall identify the protected portion(s).

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

19
20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s
23 Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 37.1 *et seq.*

26 6.3 The burden of persuasion in any such challenge proceeding shall be
27 on the Non-Designating Party. Frivolous challenges, and those made for an
28 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the Challenging Party to sanctions. Unless the
2 Designating Party has waived or withdrawn the confidentiality designation, all
3 parties shall continue to afford the material in question the level of protection to
4 which it is entitled under the Producing Party’s designation until the Court rules on
5 the challenge.
6

7 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 Action only for prosecuting, defending, or attempting to settle this Action. Such
11 Protected Material may be disclosed only to the categories of persons and under
12 the conditions described in this Order. When the Action has been terminated, a
13 Receiving Party must comply with the provisions of section 13 below (FINAL
14 DISPOSITION). Protected Material must be stored and maintained by a Receiving
15 Party at a location and in a secure manner that ensures that access is limited to the
16 persons authorized under this Order.
17

18 7.2 Disclosure of “CONFIDENTIAL” or “CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by
20 the court or permitted in writing by the Designating Party, a Receiving Party may
21 disclose any information or item designated “CONFIDENTIAL” only to those
22 identified under (a) through (i) as immediately listed below and a Receiving Party
23 may disclose any information or item designated “CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” only to those identified under (a) through (g) and
25 (i) as immediately listed below:

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

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

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
6

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

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

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

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

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

25
26 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
27 **PRODUCED IN OTHER LITIGATION**

28 If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this Action as
2 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that
3 Party must:

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

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

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

12 If the Designating Party timely seeks a protective order, the Party served with
13 the subpoena or court order shall not produce any information designated in this
14 action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY” before a determination by the court from which the subpoena or order
16 issued, unless the Party has obtained the Designating Party’s permission. The
17 Designating Party shall bear the burden and expense of seeking protection in that
18 court of its confidential material and nothing in these provisions should be
19 construed as authorizing or encouraging a Receiving Party in this Action to
20 disobey a lawful directive from another court.

21 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
22 **PRODUCED IN THIS LITIGATION**

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

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

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

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

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

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

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

26 If a Receiving Party learns that, by inadvertence or otherwise, it has
27 disclosed Protected Material to any person or in any circumstance not authorized
28 under this Stipulated Protective Order, the Receiving Party must immediately

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

8 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
9 **OTHERWISE PROTECTED MATERIAL**

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

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

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

1 Order.

2 12.3 Filing Protected Material. A Party that seeks to file under seal any
3 Protected Material must comply with Civil Local Rule 79-5. Protected Material
4 may only be filed under seal pursuant to a court order authorizing the sealing of the
5 specific Protected Material at issue. If a Party's request to file Protected Material
6 under seal is denied by the court, then the Receiving Party may file the information
7 in the public record unless otherwise instructed by the court.
8

9 **13. FINAL DISPOSITION**

10 After the final disposition of this Action, as defined in paragraph 4, within
11 60 days of a written request by the Designating Party, each Receiving Party must
12 return all Protected Material to the Producing Party or destroy such material. As
13 used in this subdivision, "all Protected Material" includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of the
15 Protected Material. Whether the Protected Material is returned or destroyed, the
16 Receiving Party must submit a written certification to the Producing Party (and, if
17 not the same person or entity, to the Designating Party) by the 60 day deadline that
18 (1) identifies (by category, where appropriate) all the Protected Material that was
19 returned or destroyed and (2) affirms that the Receiving Party has not retained any
20 copies, abstracts, compilations, summaries or any other format reproducing or
21 capturing any of the Protected Material.
22

23 Notwithstanding this provision, Counsel are entitled to retain an archival
24 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
25 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
26 work product, and consultant and expert work product, even if such materials
27 contain Protected Material. Any such archival copies that contain or constitute
28 Protected Material remain subject to this Protective Order as set forth in Section 4

1 (DURATION).

2 14. Any violation of this Order may be punished by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or monetary
4 sanctions.
5

6 **IT IS SO ORDERED.**

7 Dated: May 17, 2016
8

9
10 By: _____
11 Kenly Kiya Kato, U . S. Magistrate Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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2
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 California
7 on [date] in the case of *Denise Murtaugh v. National Railroad Passenger*
8 *Corporation*, Case No. 2:15-cv-09369-DMG-KK . I agree to comply with and to
9 be bound by all the terms of this Stipulated Protective Order and I understand and
10 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 this
14 Order.
15

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

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____
28