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8 Attorneys for Defendant and Cross-defendant Daryl Wen He

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

11 SCHENKER, INC., a New York
 12 corporation,

13 Plaintiff,

14 v.

15 DARYL HE a/k/a WEN DA HE,
 et.al.

16 Defendants.

17 GEORGE HO, dba LEADER
 18 EXPEDITE,

19 Cross-claimant,

20 v.

21 DARYL HE, individually, et.al.,

22 Cross-defendants.

23 STEPHANIE KONG, et. ano.,

24 Cross-claimants,

25 v.

26 GEORGE HO, individually, et.al.,

27 Cross-defendants.

) Case No. 2:16-CV-06321 CAS (PLAx)

~~Proposed~~ Stipulated Protective
 Order

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

17
18 **B. Good Cause Statement**

19 This action is likely to involve valuable private, commercial, financial,
20 and/or proprietary information, for which special protection from public
21 disclosure, and from use for any purpose other than prosecution of this
22 action, is warranted. Such private, confidential and proprietary materials
23 and information consist of, among other things, confidential business or
24 financial information, information regarding confidential business practices,
25 or other confidential commercial information (including information
26 implicating privacy rights of third parties), and information otherwise
27 generally unavailable to the public, or which may be privileged or otherwise
28 protected from disclosure under state or federal statutes, court rules, case

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

13 14 **2. Definitions**

15 2.1 Action: this pending federal law suit.

16 2.2 Challenging Party: a Party, or Non-Party, that challenges the
17 designation of information or items under this Order.

18 2.3 "CONFIDENTIAL" Information or Items: information
19 (regardless of how it is generated, stored, or maintained) or tangible things
20 that qualify for protection under Federal Rule of Civil Procedure 26(c), and,
21 as specified above, in the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well
23 as their support staff).

24 2.5 Designating Party: a Party, or Non-Party, that designates
25 information or items that it produces in disclosures, or in responses to
26 discovery, as "CONFIDENTIAL."

27 2.6 Disclosure or Discovery Material: all items or information,
28 regardless of the medium or manner in which it is generated, stored, or

1 maintained (including, among other things, testimony, transcripts, and
2 tangible things), that are produced or generated in disclosures or responses
3 to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a
5 matter pertinent to the litigation, who has been retained by a Party or its
6 counsel, to serve as an expert witness, or as a consultant, in this Action.

7 2.8 House Counsel: attorneys who are employees of a party to this
8 Action. House Counsel does not include Outside Counsel of Record, or any
9 other outside counsel.

10 2.9 Non-Party: any natural person, partnership, corporation,
11 association, or other legal entity not named as a Party to this Action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of
13 a party to this Action, but who are retained to represent or advise a Party to
14 this Action, and have appeared in this Action on behalf of that Party, or are
15 affiliated with a law firm that has appeared on behalf of that Party,
16 including support staff.

17 2.11 Party: any party to this Action, including all of its officers,
18 directors, employees, consultants, retained experts, and Outside Counsel of
19 Record (and their support staffs).

20 2.12 Producing Party: a Party, or Non-Party, that produces Disclosure
21 or Discovery Material in this Action.

22 2.13 Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing
24 exhibits or demonstrations, and organizing, storing, or retrieving data in any
25 form or medium), and their employees and subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is
27 designated as "CONFIDENTIAL."

28 / / /

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3
4 **3. Scope**

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

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

14
15 **4. Duration**

16 Once a case proceeds to trial, all of the court-filed information to be
17 introduced that was previously designated as confidential, or that was
18 maintained pursuant to this protective order, becomes public, and will be
19 presumptively available to all members of the public, including the press,
20 unless compelling reasons, supported by specific factual findings, to
21 proceed otherwise are presented to the trial judge in advance of the trial. *See*
22 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006)
23 (distinguishing “good cause” showing for sealing documents produced in
24 discovery from “compelling reasons” standard when merits-related
25 documents are part of court record). Accordingly, the terms of this
26 protective order do not extend beyond the commencement of the trial.

27 / / /

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1 **5. Designating Protected Material**

2 5.1 Exercise of Restraint and Care in Designating Material for
3 Protection. Each Party, or Non-Party, that designates information or items
4 for protection under this Order must take care to limit any such designation
5 to specific material that qualifies, under the appropriate standards. The
6 Designating Party must designate, for protection, only those parts of
7 material, documents, items, or oral or written communications that qualify,
8 so that other portions of the material, documents, items, or communications
9 for which protection is not warranted are not swept, unjustifiably, within
10 the ambit of this Order.

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

16 If it comes to a Designating Party's attention that information or items
17 that it designated for protection do not qualify for protection, that
18 Designating Party must promptly notify all other Parties that it is
19 withdrawing the inapplicable designation.

20 5.2 Manner and Timing of Designations. Except as otherwise
21 provided in this Order (see, e.g., second paragraph of section 5.2(a) below),
22 or as otherwise stipulated, or ordered, Disclosure or Discovery Material that
23 qualifies for protection under this Order must be clearly so designated
24 before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or
27 electronic documents, but excluding transcripts of depositions or other
28 pretrial or trial proceedings), that the Producing Party affix, at a minimum,

1 the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend") to
2 each page that contains Protected Material. If only a portion, or portions, of
3 the material on the page qualifies for protection, the Producing Party also
4 must clearly identify the protected portion(s) (e.g., by making appropriate
5 markings in the margins).

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

19 (b) for testimony given in depositions, that the Designating
20 Party identify the Disclosure or Discovery Material, on the record, before the
21 close of the deposition.

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

28 / / /

1 5.3 Inadvertent Failures to Designate. If timely corrected, an
2 inadvertent failure to designate qualified information or items does not,
3 standing alone, waive the Designating Party's right to secure protection,
4 under this Order, for such material. Upon timely correction of a designation,
5 the Receiving Party must make reasonable efforts to assure that the material
6 is treated in accordance with the provisions of this Order.

7
8 **6. Challenging Confidentiality Designations**

9 6.1 Timing of Challenges. Any Party, or Non-Party, may challenge a
10 designation of confidentiality at any time that is consistent with the Court's
11 Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the
13 dispute resolution process under Local Rule 37-1, *et seq.* Any discovery
14 motion must strictly comply with the procedures set forth in Local Rules 37-
15 1, 37-2, and 37-3.

16 6.3 Burden. The burden of persuasion in any such challenge
17 proceeding shall be on the Designating Party. Frivolous challenges, and
18 those made for an improper purpose (e.g., to harass or impose unnecessary
19 expenses and burdens on other parties) may expose the Challenging Party to
20 sanctions. Unless the Designating Party has waived, or withdrawn, the
21 confidentiality designation, all parties shall continue to afford the material in
22 question the level of protection to which it is entitled under the Producing
23 Party's designation, until the Court rules on the challenge.

24
25 **7. Access To, and Use of, Protected Material**

26 7.1 Basic Principles. A Receiving Party may use Protected Material
27 that is disclosed, or produced, by another Party, or by a Non-Party, in
28 connection with this Action, only for prosecuting, defending, or attempting

1 to settle this Action. Such Protected Material may be disclosed only to the
2 categories of persons, and under the conditions, described in this Order.
3 When the Action has been terminated, a Receiving Party must comply with
4 the provisions of section 13, below (Final Disposition).

5 All Parties to this Action agree that any Protected Material that is
6 disclosed or produced by another Party or by a Non-Party prior to the
7 Court's entry of this Order is protected by and subject to the terms of this
8 Order.

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

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the Court, or permitted, in writing, by the Designating
14 Party, a 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
17 Action, as well as employees of said Outside Counsel of Record to whom it
18 is reasonably necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including House
20 Counsel) of the Receiving Party to whom disclosure is reasonably necessary
21 for this Action and who have signed the "Acknowledgment and Agreement
22 to be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to
24 whom disclosure is reasonably necessary for this Action, and who have
25 signed the "Acknowledgement and Agreement to be Bound" (Exhibit A);

26 (d) the Court, and its personnel;

27 (e) court reporters, and their staff;

28

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 A hereto; and (2) they will not be permitted to keep any
12 Protected Material, unless they sign the “Acknowledgment and Agreement
13 to be Bound” (Exhibit A), unless otherwise agreed by the Designating Party,
14 or ordered by the Court. Pages of transcribed deposition testimony, or
15 exhibits to depositions, that reveal Protected Material may be separately
16 bound, by the court reporter, and may not be disclosed, to anyone, except as
17 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 **8. Protected Material Subpoenaed, or Ordered Produced, in Other**
23 **Litigation**

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

27 (a) promptly notify, in writing, the Designating Party. Such
28 notification shall include a copy of the subpoena or court order.

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

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

9 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 **9. A Non-Party's Protected Material Sought to be Produced in This**
20 **Litigation**

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

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 possession,
3 and the Party is subject to an agreement, with the Non-Party, not to produce
4 the Non-Party's confidential information, then the Party shall:

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

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

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

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

23
24 **10. Unauthorized Disclosure of Protected Material**

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

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

6 **11. Inadvertent Production of Privileged Material, or of Otherwise**
7 **Protected Material**

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

19
20 **12. Miscellaneous**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right
22 of any person to seek its modification, by the Court, in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of
24 this Protective Order, no Party waives any right it otherwise would have to
25 object to disclosing or producing any information or item on any ground not
26 addressed in this Stipulated Protective Order. Similarly, no Party waives
27 any right to object, on any ground, to use in evidence of any of the material
28 covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file, under seal,
2 any Protected Material must comply with Civil Local Rule 79-5. Protected
3 Material may only be filed, under seal, pursuant to a court order authorizing
4 the sealing of the specific Protected Material at issue; good cause must be
5 shown in the request to file under seal. If a Party's request to file Protected
6 Material under seal is denied by the Court, then the Receiving Party may file
7 the information in the public record, unless otherwise instructed by the
8 Court.

9
10 **13. Final Disposition**

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

1 Protected Material remain subject to this Protective Order, as set forth in
2 Section 4 (Duration).

3 **14. Violation of this Order**

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

7
8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

9
10 Dated: May 19, 2017

VALOREM LAW GROUP LLP

11
12 By: 
13 Nicole Auerbach
14 Henry E. Turner, Jr.
15 Daniel Wucherer
16 Attorneys for Plaintiff Schenker, Inc.

17
18 Dated: May 19, 2017

ROXBOROUGH, POMERANCE, NYE &
ADREANI, LLP

19 By: /s/ David A. Carman
20 Gary A. Nye
21 David A. Carman
22 Attorneys for Defendant and Cross-
23 Defendant Daryl Wen He

24
25 Dated: May 19, 2017

LAW OFFICE OF MICHAEL J. PONCE

26 By: /s/ Michael J. Ponce
27 Michael J. Ponce
28 Attorneys for Defendants,
Crossclaimants, and Cross-Defendants
Stephanie Kong and Accurate Cargo
Services

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Dated: May 19, 2017

THE KADISH LAW GROUP, P.C.

By: /s/ Steven Berkowitz
Steven Berkowitz
Attorneys for Defendants,
Crossclaimants, and Cross-Defendants
George Ho, individually, and d/b/a
Leader Expedite

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Paul Z. Abramson

Dated: May 30, 2017

United States District Judge
Magistrate

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,
5 under penalty of perjury, that I have read, in its entirety, and understand,
6 the Stipulated Protective Order that was issued, by the United States District
7 Court for the Central District of California, on _____ [date], in the case of
8 *Schenker, Inc. v. Daryl He a/k/a Wen Da He, et al.*, Case No. 2:16-CV-06321 CAS
9 (PLAx). I agree to comply with, and to be bound by, all the terms of the
10 Stipulated Protective Order, and I understand and acknowledge that failure
11 to so comply could expose me to sanctions, and to punishment in the nature
12 of contempt. I solemnly promise that I will not disclose, in any manner, any
13 information or item that is subject to the Stipulated Protective Order, to any
14 person or entity, except in strict compliance with the provisions of the
15 Stipulated Protective Order.

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

10 Date: _____

11 City and State where sworn and signed: _____

12
13 Printed name: _____

14
15 Signature: _____

1 **Certification**

2 Pursuant to L.R. 5-4.3.4(a)(2)(i), the filing attorney attests that all other
3 signatories listed, and on whose behalf the filing is submitted, concur in the
4 filing's content, and have authorized the filing.
5

6 Dated: May 19, 2017

/s/ David A. Carman
David A. Carman

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