

1 JONATHAN A. KLEIN (SBN 162071)  
jaklein@khklaw.com  
2 THOMAS K. HOCKEL (SBN 172367)  
thockel@khklaw.com  
3 MARK P. IEZZA (SBN 239813)  
miezza@khklaw.com  
4 KELLY, HOCKEL & KLEIN P.C.  
5 44 Montgomery Street, Suite 1500  
6 San Francisco, CA 94104  
7 Tel.: (415) 951-0535  
8 Fax: (415) 391-7808

8 Attorneys for Defendant  
9 PENSKE LOGISTICS, LLC, erroneously sued as "PENSKE TRUCK LEASING  
10 CO., L.P. or PENSKE LOGISTICS, LLP"

11 JOHN R. RAMIREZ (SBN 201939)  
12 Email: jrr@ramzlaw.com  
13 THE RAMIREZ LAW FIRM  
14 7121 Magnolia Avenue, Suite M  
15 Riverside, CA 92505  
16 Tel: (951) 297-3707  
17 Fax: (951) 297-3708

16 Attorneys for Plaintiffs  
17 DOLORES ROCHA and DEBRA ELLIS

18 UNITED STATES DISTRICT COURT

19 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION  
20

21 DOLORES ROCHA, deceased, by her ) Case No.: 5:15-cv-00736-R-KK  
22 successor in interest JOHN ROCHA, )  
23 and DEBRA ELLIS, an individual, )

23 Plaintiff,

24 vs.

25 PENSKE TRUCK LEASING CO.,L.P., )  
26 or PENSKE LOGISTICS LLP, a )  
27 corporation, and DOES 1 through 50, )  
28 inclusive, )

Defendants.

ORDER RE STIPULATED  
PROTECTIVE ORDER

ORDER RE STIPULATED PROTECTIVE ORDER

1           Upon consideration of the stipulation of plaintiffs Dolores Rocha, deceased,  
2 by her successor in interest John Rocha, and Debra Ellis (“Plaintiffs”) and  
3 defendant Penske Logistics, LLC (“Penske”), by and through their respective  
4 counsel of record (collectively, “the parties”), for the entry of a protective order,  
5 the Court hereby orders the following:

6       1.     PURPOSES AND GOOD CAUSE STATEMENT

7           Disclosure and discovery activity in this action is likely to involve the  
8 production of (i) proprietary business information concerning Penske’s operations;  
9 (ii) proprietary business information concerning Penske’s personnel and  
10 operational policies and procedures; and (iii) employment, personnel and/or  
11 disciplinary records of non-party Penske employees. Good cause exists for the  
12 issuance of a protective order because (i) public disclosure of Penske’s proprietary  
13 business information would create a competitive disadvantage for Penske and (ii)  
14 public disclosure of confidential information concerning Penske employees would  
15 violate the privacy rights of third parties. Further, redaction of personal  
16 identifying information of third parties would not adequately protect Penske from  
17 potential liability for the disclosure of confidential information relating to third  
18 parties. Good cause therefore exists for special protection of the categories of  
19 documents denominated in this paragraph, whether redacted or not, from public  
20 disclosure and from use for any purpose other than prosecuting this litigation.

21           Accordingly, the parties hereby stipulate to and petition the court to  
22 enter the following Stipulated Protective Order. The parties acknowledge that this  
23 Order does not confer blanket protections on all disclosures or responses to  
24 discovery and that the protection it affords from public disclosure and use extends  
25 only to the limited information or items that are entitled to confidential treatment  
26 under the applicable legal principles. The parties further acknowledge, as set forth  
27 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
28 to file confidential information under seal; Civil Local Rule 79-5 sets forth the

1 procedures that must be followed and the standards that will be applied when a  
2 party seeks permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the  
5 designation of information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information  
7 (regardless of how it is generated, stored or maintained) or tangible things that  
8 qualify for protection under Federal Rule of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and  
10 House Counsel (as well as their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates  
12 information or items that it produces in disclosures or in responses to discovery as  
13 “CONFIDENTIAL.”

14 2.5 Disclosure or Discovery Material: all items or information,  
15 regardless of the medium or manner in which it is generated, stored, or maintained  
16 (including, among other things, testimony, transcripts, and tangible things), that  
17 are produced or generated in disclosures or responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in  
19 a matter pertinent to the litigation who has been retained by a Party or its counsel  
20 to serve as an expert witness or as a consultant in this action.

21 2.7 House Counsel: attorneys who are employees of a party to this  
22 action. House Counsel does not include Outside Counsel of Record or any other  
23 outside counsel.

24 2.8 Non-Party: any natural person, partnership, corporation,  
25 association, or other legal entity not named as a Party to this action.

26 2.9 Outside Counsel of Record: attorneys who are not employees  
27 of a party to this action but are retained to represent or advise a party to this action  
28 and have appeared in this action on behalf of that party or are affiliated with a law

1 firm which has appeared on behalf of that party.

2           2.10 Party: any party to this action, including all of its officers,  
3 directors, employees, consultants, retained experts, and Outside Counsel of  
4 Record (and their support staffs).

5           2.11 Producing Party: a Party or Non-Party that produces  
6 Disclosure or Discovery Material in this action.

7           2.12 Professional Vendors: persons or entities that provide  
8 litigation support services (e.g., photocopying, videotaping, translating, preparing  
9 exhibits or demonstrations, and organizing, storing, or retrieving data in any form  
10 or medium) and their employees and subcontractors.

11           2.13 Protected Material: any Disclosure or Discovery Material that  
12 the Producing Party in good faith identifies as falling within the categories of  
13 information denominated in paragraph 1 by designating that material as  
14 “CONFIDENTIAL.”

15           2.14 Receiving Party: a Party that receives Disclosure or Discovery  
16 Material from a Producing Party.

17 3. SCOPE

18           The protections conferred by this Stipulation and Order cover not  
19 only Protected Material (as defined above), but also (1) any information copied or  
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
21 compilations of Protected Material; and (3) any testimony, conversations, or  
22 presentations by Parties or their Counsel that might reveal Protected Material.  
23 However, the protections conferred by this Stipulation and Order do not cover the  
24 following information: (a) any information that is in the public domain at the time  
25 of disclosure to a Receiving Party or becomes part of the public domain after its  
26 disclosure to a Receiving Party as a result of publication not involving a violation  
27 of this Order, including becoming part of the public record through trial or  
28 otherwise; and (b) any information known to the Receiving Party prior to the

1 disclosure or obtained by the Receiving Party after the disclosure from a source  
2 who obtained the information lawfully and under no obligation of confidentiality  
3 to the Designating Party. Any use of Protected Material at trial shall be governed  
4 by a separate agreement or order.

5 4. DURATION

6 The confidentiality obligations imposed by this Order shall remain in  
7 effect until the time of trial. If this matter proceeds to trial, information  
8 designated as CONFIDENTIAL and/or kept and maintained pursuant to the terms  
9 of this Protective Order will become public and will be presumptively available to  
10 all members of the public, including the press, unless compelling reasons  
11 supported by specific factual findings to proceed otherwise are demonstrated to  
12 the district judge in advance of trial.

13 If this matter does not proceed to trial, the confidentiality obligations  
14 imposed by this Order shall remain in effect even after final disposition until a  
15 Designating Party agrees otherwise in writing or a court order otherwise directs.  
16 Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
17 defenses in this action, with or without prejudice and (2) final judgment herein  
18 after the completion and exhaustion of all appeals, rehearings, remands, or  
19 reviews of this action, including the time limits for filing any motions or  
20 applications for extension of time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for  
23 Protection. Each Party or Non-Party that designates information or items for  
24 protection under this Order must take care to limit any such designation to specific  
25 material that qualifies under the appropriate standards. The Designating Party  
26 must designate for protection only those parts of material, documents, items, or  
27 oral or written communications that qualify – so that other portions of the  
28 material, documents, items, or communications for which protection is not

1 warranted are not swept unjustifiably within the ambit of this Order.

2           Mass, indiscriminate, or routinized designations are prohibited.  
3 Designations that are shown to be clearly unjustified or that have been made for  
4 an improper purpose (e.g., to unnecessarily encumber or retard the case  
5 development process or to impose unnecessary expenses and burdens on other  
6 parties) expose the Designating Party to sanctions. If it comes to a Designating  
7 Party's attention that information or items that it designated for protection do not  
8 qualify for protection, that Designating Party must promptly notify all other  
9 Parties that it is withdrawing the mistaken designation.

10           5.2 Manner and Timing of Designations. Except as otherwise  
11 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as  
12 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies  
13 for protection under this Order must be clearly so designated before the material is  
14 disclosed or produced.

15           Designation in conformity with this Order requires:

16           (a) for information in documentary form (e.g., paper or electronic  
17 documents, but excluding transcripts of depositions or other pretrial or trial  
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to  
19 each page that contains protected material. If only a portion or portions of the  
20 material on a page qualifies for protection, the Producing Party also must clearly  
21 identify the protected portion(s) (e.g., by making appropriate markings in the  
22 margins). A Party or Non-Party that makes original documents or materials  
23 available for inspection need not designate them for protection until after the  
24 inspecting Party has indicated which material it would like copied and produced.  
25 During the inspection and before the designation, all of the material made  
26 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting  
27 Party has identified the documents it wants copied and produced, the Producing  
28 Party must determine which documents, or portions thereof, qualify for protection

1 under this Order. Then, before producing the specified documents, the Producing  
2 Party must affix the “CONFIDENTIAL” legend to each page that contains  
3 Protected Material. If only a portion or portions of the material on a page qualifies  
4 for protection, the Producing Party also must clearly identify the protected  
5 portion(s) (e.g., by making appropriate markings in the margins).

6 (b) for testimony given in deposition or in other pretrial or trial  
7 proceedings, that the Designating Party identify on the record, before the close of  
8 the deposition, hearing, or other proceeding, all protected testimony.

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

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

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge  
23 a designation of confidentiality prior to the close of discovery in this action.  
24 Unless a prompt challenge to a Designating Party’s confidentiality designation is  
25 necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
26 burdens, or a significant disruption or delay of the litigation, a Party does not  
27 waive its right to challenge a confidentiality designation by electing not to mount  
28 a challenge promptly after the original designation is disclosed but before the

1 close of discovery.

2           6.2 Meet and Confer. The Challenging Party shall initiate the  
3 dispute resolution process by providing written notice of each designation it is  
4 challenging and describing the basis for each challenge. To avoid ambiguity as to  
5 whether a challenge has been made, the written notice must recite that the  
6 challenge to confidentiality is being made in accordance with this specific  
7 paragraph of the Protective Order. The parties shall attempt to resolve each  
8 challenge in good faith in accordance with the procedures set forth in Local Rule  
9 37.

10           6.3 Judicial Intervention. If the Parties cannot resolve a challenge  
11 without court intervention, the Parties shall follow the procedures set forth in  
12 Local Rule 37 to obtain a decision from the Court. If one or both of the Parties  
13 elect to file the Joint Stipulation required by Local Rule 37 under seal, the Parties  
14 may file a stipulation to that effect or the Challenging Party may file an ex parte  
15 application as to why the Joint Stipulation or portions thereof should be filed  
16 under seal.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18           7.1 Basic Principles. A Receiving Party may use Protected  
19 Material that is disclosed or produced by another Party or by a Non-Party in  
20 connection with this case only for prosecuting, defending, or attempting to settle  
21 this litigation. Such Protected Material may be disclosed only to the categories of  
22 persons and under the conditions described in this Order. When the litigation has  
23 been terminated, a Receiving Party must comply with the provisions of section 13  
24 below (FINAL DISPOSITION).

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

28           7.2 Disclosure of “CONFIDENTIAL” Information or Items.



1 Unless otherwise ordered by the court or permitted in writing by the Designating  
2 Party, a Receiving Party may disclose any information or item designated  
3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action,  
5 as well as employees of said Outside Counsel of Record to whom it is reasonably  
6 necessary to disclose the information for this litigation and who have signed the  
7 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
8 A;

9 (b) the officers, directors, and employees (including House Counsel)  
10 of the Receiving Party to whom disclosure is reasonably necessary for this  
11 litigation and who have signed the “Acknowledgment and Agreement to Be  
12 Bound” (Exhibit A);

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

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial  
18 consultants, mock jurors, and Professional Vendors to whom disclosure is  
19 reasonably necessary for this litigation and who have signed the  
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom  
22 disclosure is reasonably necessary and who have signed the “Acknowledgment  
23 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the  
24 Designating Party or ordered by the court. Pages of transcribed deposition  
25 testimony or exhibits to depositions that reveal Protected Material must be  
26 separately bound by the court reporter and may not be disclosed to anyone except  
27 as permitted under this Stipulated Protective Order.

28 (g) the author or recipient of a document containing the information

1 or a custodian or other person who otherwise possessed or knew the information.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
3 IN OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other  
5 litigation that compels disclosure of any information or items designated in this  
6 action as “CONFIDENTIAL,” that Party must:

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

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

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

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

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced  
26 by a Non-Party in this action and designated as “CONFIDENTIAL.” Such  
27 information produced by Non-Parties in connection with this litigation is protected  
28 by the remedies and relief provided by this Order. Nothing in these provisions

1 should be construed as prohibiting a Non-Party from seeking additional  
2 protections.

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

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

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

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

15 (c) If the Non-Party fails to object or seek a protective order from  
16 this court in accordance with Local Rule 37, the Receiving Party may produce the  
17 Non-Party's confidential information responsive to the discovery request. If the  
18 Non-Party timely seeks a protective order in accordance with Local Rule 37, the  
19 Receiving Party shall not produce any information in its possession or control that  
20 is subject to the confidentiality agreement with the Non-Party before a  
21 determination by the court. Absent a court order to the contrary, the Non-Party  
22 shall bear the burden and expense of seeking protection in this court of its  
23 Protected Material.

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 authorized  
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its

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

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR 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 Federal  
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
12 whatever procedure may be established in an e-discovery order that provides for  
13 production without prior privilege review. Pursuant to Federal Rule of Evidence  
14 502(d) and (e), insofar as the parties reach an agreement on the effect of  
15 disclosure of a communication or information covered by the attorney-client  
16 privilege or work product protection, the parties may incorporate their agreement  
17 in the stipulated protective order submitted to the court.

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the  
20 right of any person to seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of  
22 this Protective Order no Party waives any right it otherwise would have to object  
23 to disclosing or producing any information or item on any ground not addressed in  
24 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
25 any ground to use in evidence of any of the material covered by this Protective  
26 Order.

27 12.3 Filing Protected Material. Without written permission from the  
28 Designating Party or a court order secured after appropriate notice to all interested

1 persons, a Party may not file in the public record in this action any Protected  
2 Material. A Party that seeks to file under seal any Protected Material must comply  
3 with Civil Local Rule 79-5. Protected Material may only be filed under seal  
4 pursuant to a court order authorizing the sealing of the specific Protected Material  
5 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a  
6 request establishing that the Protected Material at issue is privileged, protectable  
7 as a trade secret, or otherwise entitled to protection under the law. If a Receiving  
8 Party's request to file Protected Material under seal pursuant to Civil Local Rule  
9 79-5 is denied by the court, then the Receiving Party may file the information in  
10 the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by  
11 the court.

12 13. FINAL DISPOSITION

13           Within 90 days after the final disposition of this action, as defined in  
14 paragraph 4, each Receiving Party must either return all Protected Material to the  
15 Producing Party or destroy such material. As used in this subdivision, “all  
16 Protected Material” includes all copies, abstracts, compilations, summaries, and  
17 any other format reproducing or capturing any of the Protected Material. Whether  
18 the Protected Material is returned or destroyed, the Receiving Party should submit  
19 a written certification to the Producing Party (and, if not the same person or entity,  
20 to the Designating Party) by the 90 day deadline that verifies that all Protected  
21 Material has either been returned or destroyed. If counsel who originally  
22 designated the material as Protected Material does not receive that verification or  
23 is unsatisfied with that verification, that counsel must within 30 days of the  
24 expiration of the 90 day time period request in writing a verification that all  
25 Protected Material has been returned or destroyed. Notwithstanding this  
26 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
27 papers, trial, deposition, hearing transcripts, legal memoranda, correspondence,  
28 deposition, trial exhibits, expert reports, attorney work product, consultant and

1 expert work product, even if such materials contain Protected Material. Any such  
2 archival copies that contain or constitute Protected Material remain subject to this  
3 Protective Order as set forth in Section 4 (DURATION).

4

5 PURSUANT TO STIPULATION OF THE PARTIES, IT IS SO ORDERED.

6

7 DATED: January 21, 2016

8

9



10

---

United States District

11

12

13

14

15

16

17

18

19

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 [date] in the case of *Rocha, et al. v. Penske Truck Leasing Co.,  
L.P., et al.*, Case No. 5:15-cv-00736-R-KK. 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 Northern 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 this action or any proceedings related to enforcement of this  
Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_