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 10 U.S. XPRESS ENTERPRISES, INC. and
 U.S. XPRESS, INC.

11 *(Additional Counsel listed below)*
 12
 13

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 ANTHONY AYALA, individually and
 17 on behalf of all those similarly situated,

18 Plaintiffs,

19 v.

20 U.S. XPRESS ENTERPRISES, INC.,
 21 U.S. XPRESS, INC., and DOES 1-100,

22 Defendants.

Case No. 5:16-cv-00137-GW-KK

**[PROPOSED] ORDER
 GRANTING STIPULATED
 MOTION FOR PROTECTIVE
 ORDER**

Complaint Filed: December 23, 2015

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 24 NOTE CHANGES MADE BY THE COURT
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1 Upon the stipulation of the parties, a protective order is granted and entered
2 as follows:

3 **1. Purposes and Limitations.**

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

17 **2. Good Cause Statement.**

18 This action is likely to involve commercial, financial, and/or proprietary
19 business information for which special protection from public disclosure and from
20 use for any purpose other than prosecution of this action is warranted. Such
21 confidential and proprietary materials and information consist of, among other
22 things, confidential business or financial information, information regarding
23 confidential business practices and organization, confidential commercial
24 information (potentially including information implicating the privacy rights of
25 third parties, information otherwise generally unavailable to the public, or
26 information that may be privileged or otherwise protected from disclosure under
27 state or federal statutes, court rules, case decisions, or common law. Accordingly,
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1 to expedite the flow of information, to facilitate the prompt resolution of disputes
2 over confidentiality of discovery materials, to adequately protect information the
3 parties are entitled to keep confidential, to ensure that the parties are permitted
4 reasonable necessary uses of such material in preparation for and in the conduct of
5 trial, to address their handling at the end of the litigation, and to serve the ends of
6 justice, a protective order for such information is justified in this matter. It is the
7 intent of the parties that information will not be designated as confidential for
8 tactical reasons and that nothing be so designated without a good faith belief that it
9 has been maintained in a confidential, non-public manner, and there is good cause
10 why it should not be part of the public record of this case.

11 **3. Nondisclosure of Confidential Documents.**

12 (a) "Document" means, without limiting its generality, any physical thing
13 containing information or any written, recorded, graphic or other matter, whether
14 produced, printed, reproduced, or stored on paper, cards, tapes, disks, belts,
15 charges, film, computer storage devices or any other medium, including but not
16 limited to all documents necessary to the comprehension or understandings of any
17 designated document, such as computer code or metadata, and includes but is not
18 limited to originals, drafts, redrafts and each separate copy of each document.

19 (b) Except with prior written consent of the party designating a document
20 to be protected from disclosure or as set forth in Paragraph 2 below, no document
21 designated as CONFIDENTIAL may be disclosed to any person or entity. A party
22 who produces material may designate it as CONFIDENTIAL when the party in
23 good faith believes it contains proprietary information, trade secrets, privileged
24 information, or nonpublic technical, financial, personal or business information. A
25 document designated as CONFIDENTIAL means any document which bears the
26 legend CONFIDENTIAL or, if it is not feasible to label the document, which the
27

1 producing party indicates via cover letter or otherwise at the time of production is
2 being produced as CONFIDENTIAL.

3 (c) Except with prior written consent of the party designating a document
4 to be protected from disclosure or as set forth in Paragraph 3 below, no document
5 designated as CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY may be
6 disclosed to any person or entity. A party who produces material may designate it
7 as CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY when the party in good
8 faith believes it contains highly sensitive proprietary information, trade secrets,
9 privileged information, or nonpublic technical, financial, personal or business
10 information. A document designated as CONFIDENTIAL - FOR ATTORNEY'S
11 EYES ONLY means any document which bears the legend CONFIDENTIAL -
12 FOR ATTORNEY'S EYES ONLY or, if it is not feasible to label the document,
13 which the producing party indicates via cover letter or otherwise at the time of
14 production is being produced as CONFIDENTIAL - FOR ATTORNEY'S EYES
15 ONLY.

16 (d) A party receiving from another party any document that has been
17 designated as CONFIDENTIAL or CONFIDENTIAL - FOR ATTORNEY'S
18 EYES ONLY may object in writing to the designation and must state the reasons
19 for such objection with respect to each item. The parties shall then meet and confer
20 in good faith regarding the designation. If the parties are unable to come to an
21 agreement regarding the designation, the party challenging the designation shall be
22 obligated to file a motion with the Court challenging such designation. Any such
23 motion shall be filed in strict compliance with Local Rules 37-1 and 37-2
24 (including the Joint Stipulation requirement).

25 (e) This Stipulated Protective Order shall be without prejudice to the right
26 of any party to: bring before the Court at any time that is consistent with the
27 Court's Scheduling Order the question of whether any information or documents
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1 are confidential; object to the production of any
2 information or documents it reasonably considers not subject to discovery or
3 object to their use at trial; and/or apply to or move the Court for an order
4 compelling production of information or documents or modifying this Stipulated
5 Protective Order.

6 **4. Court Use and Court Personnel.**

7 Notwithstanding anything to the contrary in this Protective Order:

8 (a) Any use of material designated CONFIDENTIAL or
9 CONFIDENTIAL – FOR ATTORNEY’S EYES ONLY at trial or other court
10 hearings or proceedings shall be governed by the orders of the trial judge.

11 (b) The terms of this Protective Order do not apply to the Court and court
12 personnel, who are subject *only* to the Court’s internal procedures regarding the
13 handling of material filed or lodged, including material filed or lodged under seal.

14 **5. Permissible Disclosures of CONFIDENTIAL Documents.**

15 Notwithstanding paragraph 1, documents designated as CONFIDENTIAL
16 may be disclosed to:

17 (a) the parties and their legal counsel in these proceedings;

18 (b) partners, associates, secretaries, paralegal assistants, and employees of
19 such counsel to the extent reasonably necessary to render professional services in
20 the litigation;

21 (c) persons with prior knowledge of the documents designated as
22 CONFIDENTIAL and confidential information contained therein;

23 (d) experts who will be providing professional opinions based upon a
24 review of the CONFIDENTIAL information;

25 (e) court officials involved in this litigation, including court reporters; and

26 (f) any person designated by the Court in the interest of justice, upon
27 such terms as the Court may deem proper.
28

1 (g) any other individual who has been advised of the contents of this
2 Protective Order and has signed a non-disclosure agreement in the form of Exhibit
3 "A." Insofar as disclosure of CONFIDENTIAL information to Professional
4 Vendors, meaning persons or entities that provide litigation support services (e.g.
5 photocopying, videotaping, translating, preparing exhibits or demonstrations, and
6 organizing, storing, or retrieving data in any form or medium) and their employees
7 and subcontractors, it shall suffice that an authorized representative of the
8 Professional Vendor signs Exhibit "A".

9 **6. Permissible Disclosure of Confidential - For Attorney's Eyes Only**
10 **Documents.**

11 Documents designated as CONFIDENTIAL - FOR ATTORNEY'S EYES
12 ONLY may only be disclosed to (a) counsel for the parties; (b) partners, associates,
13 secretaries, paralegal assistants, and employees of such counsel, to the extent
14 reasonably necessary to render professional services in the litigation; (c) persons
15 with prior knowledge of the documents designated as CONFIDENTIAL – FOR
16 ATTORNEY’S EYES ONLY and confidential information contained therein; (d)
17 experts who will be providing professional opinions based upon a review of the
18 CONFIDENTIAL – FOR ATTORNEY’S EYES ONLY information; (e) court
19 officials involved in this litigation, including court reporters; (f) any person
20 designated by the Court in the interest of justice, upon such terms as the Court may
21 deem proper; and (g) Professional Vendors, meaning persons or entities that
22 provide litigation support services (e.g. photocopying, videotaping, translating,
23 preparing exhibits or demonstrations, and organizing, storing, or retrieving data in
24 any form or medium) and their employees and subcontractors. A party wishing to
25 disclose documents designated as CONFIDENTIAL - FOR ATTORNEY'S EYES
26 ONLY to any other person or entity must first obtain prior written consent from the
27 producing party or the Court.

1 **7. Securing Confidential Documents and Information.**

2 Counsel for the parties must keep all documents designated as
3 CONFIDENTIAL and all documents designated as CONFIDENTIAL - FOR
4 ATTORNEY'S EYES ONLY which are received under this Stipulated Protective
5 Order in a secure area. Prior to receiving any document designated as
6 CONFIDENTIAL, Plaintiff or any person identified in Paragraph 2(d) or 2(g) shall
7 be provided with a copy of this Stipulated Protective Order and agree to be bound
8 by its terms, and shall certify such agreement by signing a document of the form
9 set forth as Exhibit "A" to this Stipulated Protective Order. Prior to receiving any
10 document designated as CONFIDENTIAL – FOR ATTORNEY’S EYES ONLY,
11 any person identified in Paragraph 3(d) and a person representing any Professional
12 Vendor identified in Paragraph 3(g) shall be provided with a copy of this
13 Stipulated Protective Order and agree to be bound by its terms, and shall certify
14 such agreement by signing a document of the form set forth as Exhibit "A" to this
15 Stipulated Protective Order. Such persons provided CONFIDENTIAL information
16 shall return all CONFIDENTIAL information to Counsel upon termination of this
17 litigation. Counsel making disclosure to any person described herein shall retain
18 the original executed copy of the certificate until final resolution of this litigation.
19 Prior to receiving any document designated as CONFIDENTIAL - FOR
20 ATTORNEY'S EYES ONLY, and after written consent to such production has
21 been obtained from the producing party or Court, any person other than those
22 identified in Paragraph 3 shall be provided with a copy of this Stipulated Protective
23 Order and agree to be bound by its terms, and shall certify such agreement by
24 signing a document of the form set forth as Exhibit "A" to this Stipulated
25 Protective Order. Such persons provided CONFIDENTIAL - FOR ATTORNEY'S
26 EYES ONLY information shall return all CONFIDENTIAL - FOR ATTORNEY'S
27 EYES ONLY information to Counsel upon termination of this litigation. Counsel
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1 making disclosure to any person described herein shall retain the original executed
2 copy of the certificate until final resolution of this litigation.

3 **8. Confidential Documents and Information in Depositions.**

4 (a) A deponent may during a deposition be shown and examined about
5 documents designated as CONFIDENTIAL and CONFIDENTIAL - FOR
6 ATTORNEY'S EYES ONLY or confidential information contained therein only if
7 the deponent is one of the persons or entities designated in Paragraph 2 or in
8 compliance with the provisions of Paragraph 2 and/or Paragraph 3, as applicable.
9 Deponents shall not retain or copy portions of the transcript of their depositions
10 that contain confidential information not provided by them or the entities they
11 represent. A deponent who is not a party or a representative of a party shall be
12 furnished a copy of this Order before being examined or asked to produce
13 documents potentially subject to this Order.

14 (b) Parties (and deponents) may, within 30 days after receiving a
15 deposition transcript, designate pages of the transcript (and exhibits thereto) as
16 CONFIDENTIAL or CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY by
17 underlining the portions of the pages that are confidential and marking such pages
18 with one of the following legends, as applicable: (i) CONFIDENTIAL or (ii)
19 CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY. Until the expiration of the
20 30-day period, the entire deposition will be treated as CONFIDENTIAL pursuant
21 to this Order. If no party or deponent timely designates information or testimony
22 in a deposition as CONFIDENTIAL or CONFIDENTIAL - FOR ATTORNEY'S
23 EYES ONLY, then none of the transcript or its exhibits will be treated as material
24 protected by this Order.

25 **9. Filing.**

26 Any party seeking to file material designated as CONFIDENTIAL or
27 CONFIDENTIAL – FOR ATTORNEY’S EYES ONLY shall seek to file it under
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1 seal according to the provisions of Civil Local Rule 79-5. Material designated as
2 CONFIDENTIAL or CONFIDENTIAL-FOR ATTORNEY’S EYES ONLY may
3 only be filed under seal pursuant to a court order authorizing the sealing of the
4 specified material. If a party’s request to file material designated as
5 CONFIDENTIAL or CONFIDENTIAL – FOR ATTORNEY’S EYES ONLY is
6 denied by the court, then the Receiving Party may file the information in the public
7 record unless otherwise instructed by the Court.

8 **10. Inadvertent Disclosure.**

9 (a) If a party, through inadvertence, produces any information or
10 documents without labeling or marking or otherwise designating it as
11 CONFIDENTIAL or CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY in
12 accordance with the provisions of this Order, the producing party may give written
13 notice to the receiving party that the document or thing produced is deemed
14 confidential and should be treated as such in accordance with the provisions of this
15 Order. The receiving party must treat such documents and things as confidential
16 from the date such notice is received. Disclosure, prior to the receipt of such
17 notice, to persons not authorized to receive confidential information shall not be
18 deemed to be a violation of this Order.

19 (b) If a party, through inadvertence, produces any document or
20 information that it believes is immune from discovery pursuant to an
21 attorney/client privilege or the work product privilege, such production shall not be
22 deemed a waiver of any privilege, and the producing party may give written notice
23 to the receiving party that the document or information produced is deemed
24 privileged and that return of the document or information is requested. Upon
25 receipt of such written notice, the receiving party shall immediately gather the
26 original and all copies of the document or information of which the receiving party
27 is aware and shall immediately return the original and all such copies to the
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1 producing party. The return of the document(s) and/or information to the
2 producing party shall not preclude the receiving party from later moving the Court
3 to compel production of the returned documents and/or information.

4 **11. Use.**

5 (a) Persons or entities obtaining access to documents designated as
6 CONFIDENTIAL or documents designated as CONFIDENTIAL - FOR
7 ATTORNEY'S EYES ONLY and confidential information contained therein under
8 this Order shall use the information only for preparation and trial of this litigation
9 (including appeals and retrial), and shall not use such information for any other
10 purpose, including business, governmental, commercial, administrative, or judicial
11 proceedings.

12 (b) If another court, administrative agency, tribunal, person, or entity
13 subpoenas or orders production of information or documents designated as
14 CONFIDENTIAL or CONFIDENTIAL - FOR ATTORNEY'S EYES ONLY that a
15 party has obtained pursuant to this Order, that party shall promptly notify the
16 producing party of the subpoena or production order. Such notice must be provided
17 in sufficient time to give the producing party, if possible, the opportunity to
18 participate in quashing, modifying, or otherwise responding to any compulsory
19 process in an appropriate and timely manner. Upon the filing by the producing
20 party of a motion to quash or for protective order, the subpoenaed party shall
21 withhold production of documents during the pendency of the motion, unless
22 required by law (or court order) not to withhold production. Nothing in this
23 Protective Order shall be construed as authorizing a party to disobey a lawful
24 subpoena or court issued in another action.

25 (c) By stipulating to the entry of this Protective Order no party waives
26 any right it otherwise would have had to object to disclosing or producing any
27 information or item on any ground not addressed in this Protective Order.

1 Similarly, no party waives any right to object on any ground to use in evidence of
2 any of the material covered by this Protective Order.

3 **12. Non-Termination.**

4 The provisions of this Order shall survive the termination of this action and
5 continue in full force and effect until further order of this Court. Within 60 days
6 after final conclusion of all aspects of this litigation, documents designated as
7 CONFIDENTIAL, documents designated as CONFIDENTIAL - FOR
8 ATTORNEY'S EYES ONLY, or documents containing confidential information,
9 which include but are not limited to, all copies, abstracts, compilations, summaries,
10 and any other format reproducing or capturing material designated as
11 CONFIDENTIAL or CONFIDENTIAL – FOR ATTORNEY’S EYES ONLY, and
12 all copies of same, shall be returned upon written request to the party or person that
13 produced such documents, or, at the option of the producer, destroyed, except that
14 counsel may retain one copy of all such documents as part of a permanent
15 litigation file that is otherwise subject to the confidentiality restrictions set forth
16 herein. The foregoing shall not be construed as creating any obligation to disclose
17 documents protected by the attorney-client privilege or subject to the attorney work
18 produce rule.

19 **13. Modification.**

20 Nothing in this Stipulation and Protective Order shall prevent any party or
21 other person from seeking modification of this Stipulated Protective Order or from
22 objecting to discovery that it believes to be otherwise improper. Any motion
23 brought by any party seeking to modify this Protective Order must be brought in
24 strict compliance with Local Rules 37-1 and 37-2 (including the Joint Stipulation
25 requirement).

1 **14. Matters of Public Record.**

2 This Stipulated Protective Order shall not apply to any document or
3 materials obtained by counsel which that counsel can demonstrate:

4 (a) were already a matter of public record before its receipt by discovery;
5 or

6 (b) became a matter of public record after discovery without fault,
7 negligence or a violation of this Stipulated Protective Order.

8
9 **IT IS SO ORDERED.**

10 Dated this 8TH day of SEPTEMBER , 2016.

11
12
13 BY THE COURT:

14 

15 _____
16 The Honorable Kenly Kiya Kato
17 United States Magistrate Judge

1 **EXHIBIT "A"**

2 **NONDISCLOSURE AGREEMENT**

3
4 The undersigned, _____ (print or type
5 name of person) hereby acknowledges that he or she received a copy of the
6 Stipulated Protective Order entered into in the case entitled *Anthony Ayala v. U.S.*
7 *Xpress Enterprises, Inc. et al.*, has read the Stipulated Protective Order, agrees to
8 be bound by all the provisions thereof, and hereby submits to the jurisdiction of the
9 United States District Court for the Central District of California for the purpose of
10 enforcement of the terms of the Stipulated Protective Order and the punishment of
11 violations thereof.

12 Dated: _____

13 _____
14 [Signature]

15 _____
16 _____
17 [Address]

1 By /s/James H. Hanson
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26 ATTORNEY FOR PLAINTIFFS
27
28

1 **ATTESTATION OF FILER**

2 I, David Borgen, attest that the other Signatories concur in the
3 foregoing and authorize the filing of this document. Signed this 7th day of
4 September, 2016.

5
6 Respectfully submitted,

7
8 Dated: September 7, 2016

9
10 GOLDSTEIN, BORGEN,
11 DARDARIAN & HO

12
13 /s/ David Borgen
14 David Borgen