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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

PETE CASTILLO, JR.,
Plaintiff,
v.
TRANSPORT CORPORATION OF
AMERICA, INC. d/b/a TRANSPORT
AMERICA AND SANDRA MOORE
JOHNSON,
Defendants.

Case No. 5:16-CV-01231-JGB-KK
Assigned to: Judge Jesus G. Bernal
Assigned to Magistrate Judge:
Hon. Kenly Kiya Kato
**STIPULATED PROTECTIVE
ORDER**
Please note changes by Court

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords from public disclosure and use extends
2 only to the limited information or items that are entitled to confidential treatment
3 under the applicable legal principles. The parties further acknowledge, as set forth
4 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
5 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
6 procedures that must be followed and the standards that will be applied when a
7 party seeks permission from the court to file material under seal.

8 B. GOOD CAUSE STATEMENT

9 This action is likely to involve trade secrets, customer and pricing lists and
10 other valuable research, development, commercial, financial, technical and/or
11 proprietary information for which special protection from public disclosure and
12 from use for any purpose other than prosecution of this action is warranted. Such
13 confidential and proprietary materials and information consist of, among other
14 things, confidential business or financial information, information regarding
15 confidential business practices, or other confidential research, development, or
16 commercial information (including information implicating privacy rights of third
17 parties), information otherwise generally unavailable to the public, or which may
18 be privileged or otherwise protected from disclosure under state or federal statutes,
19 court rules, case decisions, or common law. Accordingly, to expedite the flow of
20 information, to facilitate the prompt resolution of disputes over confidentiality of
21 discovery materials, to adequately protect information the parties are entitled to
22 keep confidential, to ensure that the parties are permitted reasonable necessary uses
23 of such material in preparation for and in the conduct of trial, to address their
24 handling at the end of the litigation, and serve the ends of justice, a protective order
25 for such information is justified in this matter. It is the intent of the parties that
26 information will not be designated as confidential for tactical reasons and that
27 nothing be so designated without a good faith belief that it has been maintained in

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1 a confidential, non-public manner, and there is good cause why it should not be
2 part of the public record of this case.

3 2. DEFINITIONS

4 2.1 Action: this pending federal law suit.

5 2.2 Challenging Party: a Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 2.5 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.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless of
17 the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced
19 or generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve
22 as an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

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1 2.10 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 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is
15 designated as "CONFIDENTIAL."

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 3. SCOPE

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

26 4. DURATION

27 ~~Once a case proceeds to trial, all of the information that was designated as~~
28 ~~confidential or maintained pursuant to this protective order becomes public and~~

1 ~~will be presumptively available to all members of the public, including the press,~~
2 ~~unless compelling reasons supported by specific factual findings to proceed~~
3 ~~otherwise are made to the trial judge in advance of the trial. See Kamakana v. City~~
4 ~~and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing~~
5 ~~“good cause” showing for sealing documents produced in discovery from~~
6 ~~“compelling reasons” standard when merits-related documents are part of court~~
7 ~~record). Accordingly, the terms of this protective order do not extend beyond the~~
8 ~~commencement of the trial.~~

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

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection
20 under this Order must take care to limit any such designation to specific material
21 that qualifies under the appropriate standards. The Designating Party must
22 designate for protection only those parts of material, documents, items, or oral or
23 written communications that qualify so that other portions of the material,
24 documents, items, or communications for which protection is not warranted are not
25 swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber the case development process or to

1 impose unnecessary expenses and burdens on other parties) may expose the
2 Designating Party to sanctions.

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

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

11 Designation in conformity with this Order requires:

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

19 If a party believes certain material to be "CONFIDENTIAL", the party shall
20 designate the material as "CONFIDENTIAL" and provide the material bearing the
21 "CONFIDENTIAL" endorsement to the other party without the requirement that
22 such receiving party physically inspect the designated confidential information or
23 material.

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

27 (c) for information produced in some form other than documentary and for
28 any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information is stored the legend
2 “CONFIDENTIAL.” If only a portion or portions of the information warrants
3 protection, the Producing Party, to the extent practicable, shall identify the
4 protected portion(s).

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

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37.1 et seq.

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

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

8 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 "CONFIDENTIAL" only to:

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

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

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

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Vendors to
23 whom disclosure is reasonably necessary for this Action and who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

27 (h) during their depositions, witnesses, and attorneys for witnesses, in
28 the Action to whom disclosure is reasonably necessary provided: (1) the deposing

1 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
2 they will not be permitted to keep any confidential information unless they sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
4 agreed by the Designating Party or ordered by the court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material may
6 be separately bound by the court reporter and may not be disclosed to anyone
7 except as permitted under this Stipulated Protective Order; and

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

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

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

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served
24 with the subpoena or court order shall not produce any information designated in
25 this action as “CONFIDENTIAL” before a determination by the court from which
26 the subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this Action
2 to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

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

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

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

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

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

22 (c) If the Non-Party fails to seek a protective order from this court within 14
23 days of receiving the notice and accompanying information, the Receiving Party
24 may produce the Non-Party's confidential information responsive to the discovery
25 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
26 not produce any information in its possession or control that is subject to the
27 confidentiality agreement with the Non-Party before a determination by the court.

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1 Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Protected Material to any person or in any circumstance not authorized
6 under this Stipulated Protective Order, the Receiving Party must immediately (a)
7 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
8 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
9 the person or persons to whom unauthorized disclosures were made of all the terms
10 of this Order, and (d) request such person or persons to execute the
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
12 Exhibit A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

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

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the Court in the future.

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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order. For avoidance of doubt, the designation of material as “CONFIDENTIAL”
7 shall not amount to an assertion of privilege for such designated material.

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

14 13. FINAL DISPOSITION


15 After the final disposition of this Action, as defined in paragraph 4, within
16 60 days of a written request by the Designating Party, each Receiving Party must
17 return all Protected Material to the Producing Party or destroy such material. As
18 used in this subdivision, “all Protected Material” includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any of the
20 Protected Material. Whether the Protected Material is returned or destroyed, the
21 Receiving Party must submit a written certification to the Producing Party (and, if
22 not the same person or entity, to the Designating Party) by the 60 day deadline that
23 (1) identifies (by category, where appropriate) all the Protected Material that was
24 returned or destroyed and (2) affirms that the Receiving Party has not retained any
25 copies, abstracts, compilations, summaries or any other format reproducing or
26 capturing any of the Protected Material. Notwithstanding this provision, Counsel
27 are entitled to retain an archival copy of all pleadings, motion papers, trial,
28 deposition, and hearing transcripts, legal memoranda, correspondence, deposition

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

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

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: NOV 06 2016

10
11 By: 
12 Frank Guerra, Esq.
13 Jorge Mares, Esq.
14 WATTS GUERRA LLP
Attorneys for Plaintiff, PETE CASTILLO, JR.

15 DATED: _____

16
17 By: _____
18 Norman A. Ryan, Esq.
19 Timothy M. White, Esq.
20 RYAN CARVALHO & WHITE LLP
21 Attorneys for Defendants, TRANSPORT CORPORATION OF AMERICA,
22 INC. d/b/a TRANSPORT AMERICA AND SANDRA MOORE JOHNSON

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: 12/29/16

25 
26 By: _____
27 Hon. Kenly Kiya Kato
28 United States District/Magistrate Judge

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

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

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: _____

10
11 By: _____

12 Frank Guerra, Esq.
13 Jorge Mares, Esq.
14 WATTS GUERRA LLP
15 Attorneys for Plaintiff, PETE CASTILLO, JR.

16 DATED: November 30, 2016

17 By: _____

18 Norman A. Ryan, Esq.
19 Timothy M. White, Esq.
20 RYAN CARVALHO & WHITE LLP
21 Attorneys for Defendants, TRANSPORT CORPORATION OF AMERICA,
22 INC. d/b/a TRANSPORT AMERICA AND SANDRA MOORE JOHNSON

23
24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: 12/29/16

26 By: _____

27 Hon. Kenly Kiya Kato
28 United States District/Magistrate Judge

1 EXHIBIT A

2
3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4
5 I, _____ [print or type full name], of
6 _____ [print or
7 type full address], declare under penalty of perjury that I have read in its entirety
8 and understand the Stipulated Protective Order that was issued by the United States
9 District Court for the Central District of California on _____ [date] in
10 the case of Pete Castillo, Jr. v. Transport Corporation of America, Inc., et al., Case
11 No. 5:16-CV-01231-JGB-KK. I agree to comply with and to be bound by all the
12 terms of this Stipulated Protective Order and I understand and acknowledge that
13 failure to so comply could expose me to sanctions and punishment in the nature of
14 contempt. I solemnly promise that I will not disclose in any manner any
15 information or item that is subject to this Stipulated Protective Order to any person
16 or entity except in strict compliance with the provisions of this Order.

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

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____