

1 Janice P. Brown, Esq. (SBN 114433)
 2 brown@brownlawgroup.com
 3 Stacy L. Fode, Esq. (SBN 199883)
 4 fode@brownlawgroup.com
 5 Cody J. Cocanig, Esq. (SBN 303894)
 6 cocanig@brownlawgroup.com
 7 BROWN LAW GROUP
 8 600 B Street, Suite 1650
 9 San Diego, CA 92101
 10 Facsimile: (619) 330-1701
 11 *Attorneys for Defendants* UNITED PARCEL
 12 SERVICE, INC. and DOLRELL KNIGHT

13 Marcelo A Diguez (SBN 221951)
 14 mdiguez@dieferlaw.com
 15 DIEFER LAW GROUP, P.C.
 16 2030 Main Street, Suite 1300
 17 Irvine, CA 92614
 18 Fax: (949) 260-9132

19 Jerry D. Underwood (SBN 202874)
 20 junderwood@jdulaw.com
 21 LAW OFFICES OF JERRY D. UNDERWOOD, A.P.C.
 22 8141 East Kaiser, Suite 120
 23 Anaheim Hills, CA 92808
 24 Fax: (714) 998-9812
 25 *Attorneys for Plaintiff*

26 **UNITED STATES DISTRICT COURT**
 27 **CENTRAL DISTRICT OF CALIFORNIA**

28 DIAMOND BANKS, an individual,
 Plaintiff,
 v.
 UNITED PARCEL SERVICE, INC.,
 an Ohio corporation; DARRELL
 KNIGHT, an individual; and DOES 1
 through 25, inclusive,
 Defendants.

Case No. 5:17-cv-02400-AG-SP

**STIPULATED PROTECTIVE
 ORDER**

Honorable Andrew J. Guilford
 Courtroom 10D

Complaint Filed: October 25, 2017
 Removal Filed: November 30, 2017

1
2 Plaintiff DIAMOND BANKS (“Plaintiff”) and Defendants UNITED
3 PARCEL SERVICE, INC. (“UPS”) and DOLRELL KNIGHT erroneously sued as
4 Darrell Knight (“Knight”) (collectively, “Defendants”) (Plaintiff and Defendants are
5 collectively referred to as the “Parties”) agree to be bound by, and agree to instruct
6 their representatives to abide by, the terms of the following protective order, and
7 hereby stipulate to and petition the Court to enter the following stipulated protective
8 order (hereafter “Stipulated Protective Order” or “Order”)

9 **1. STIPULATED PROTECTIVE ORDER**

10 **A. PURPOSES AND LIMITATIONS**

11 Discovery in this action is likely to involve production of confidential,
12 proprietary, or private information for which special protection from public
13 disclosure and from use for any purpose other than prosecuting this litigation may
14 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
15 enter the following Stipulated Protective Order. The parties acknowledge that this
16 Order does not confer blanket protections on all disclosures or responses to discovery
17 and that the protection it affords from public disclosure and use extends only to the
18 limited information or items that are entitled to confidential treatment under the
19 applicable legal principles. The parties further acknowledge, as set forth in Section
20 12, below, that this Stipulated Protective Order does not entitle them to file
21 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
22 that must be followed and the standards that will be applied when a party seeks
23 permission from the court to file material under seal.

24 **B. GOOD CAUSE STATEMENT**

25 This action is likely to involve trade secrets, customer and pricing lists and
26 other valuable research, development, commercial, financial, technical and/or
27 proprietary information for which special protection from public disclosure and from
28 use for any purpose other than prosecution of this action is warranted. Such

1 confidential and proprietary materials and information consist of, among other
2 things, confidential business or financial information, information regarding
3 confidential business practices, or other confidential research, development, or
4 commercial information (including information implicating privacy rights of third
5 parties), information otherwise generally unavailable to the public, or which may be
6 privileged or otherwise protected from disclosure under state or federal statutes,
7 court rules, case decisions, or common law. Accordingly, to expedite the flow of
8 information, to facilitate the prompt resolution of disputes over confidentiality of
9 discovery materials, to adequately protect information the parties are entitled to keep
10 confidential, to ensure that the parties are permitted reasonable necessary uses of
11 such material in preparation for and in the conduct of trial, to address their handling
12 at the end of the litigation, and serve the ends of justice, a protective order for such
13 information is justified in this matter. It is the intent of the parties that information
14 will not be designated as confidential for tactical reasons and that nothing be so
15 designated without a good faith belief that it has been maintained in a confidential,
16 non-public manner, and there is good cause why it should not be part of the public
17 record of this case.

18 **2. DEFINITIONS**

19 2.1 Action: *Diamond Banks v. United Parcel Service, Inc., Darrell Knight,*
20 *et al.*, Case No. 5:17-cv-02400-AG-SP.

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

23 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for
25 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
26 Good Cause Statement.

27 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
28 their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a party
17 to this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm which
19 has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

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

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 **3. SCOPE**

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

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

13 **4. DURATION**

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

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under
25 this Order must take care to limit any such designation to specific material that
26 qualifies under the appropriate standards. The Designating Party must designate for
27 protection only those parts of material, documents, items, or oral or written
28 communications that qualify so that other portions of the material, documents, items,

1 or communications for which protection is not warranted are not swept unjustifiably
2 within the ambit of this Order.

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

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

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

16 Designation in conformity with this Order requires:

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

24 A Party or Non-Party that makes original documents available for inspection
25 need not designate them for protection until after the inspecting Party has indicated
26 which documents it would like copied and produced. During the inspection and
27 before the designation, all of the material made available for inspection shall be
28 deemed "CONFIDENTIAL." After the inspecting Party has identified the

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

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

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

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

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time that is consistent with the Court’s
26 Scheduling Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
28 resolution process under Local Rule 37.1 et seq.

1 6.3 The burden of persuasion in any such challenge proceeding shall be on
2 the Designating Party. Frivolous challenges, and those made for an improper purpose
3 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
4 expose the Challenging Party to sanctions. Unless the Designating Party has waived
5 or withdrawn the confidentiality designation, all parties shall continue to afford the
6 material in question the level of protection to which it is entitled under the Producing
7 Party’s designation until the Court rules on the challenge.

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

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

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

19 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 “CONFIDENTIAL” only to:

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

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

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

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

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

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

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

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
22 **PRODUCED IN OTHER LITIGATION**

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

26 b) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;

28 c) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the subpoena
2 or order is subject to this Protective Order. Such notification shall include a copy of
3 this Stipulated Protective Order; and

4 d) cooperate with respect to all reasonable procedures sought to be
5 pursued by the Designating Party whose Protected Material may be affected.

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

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

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
18 produced by Non-Parties in connection with this litigation is protected by the
19 remedies and relief provided by this Order. Nothing in these provisions should be
20 construed as prohibiting a Non-Party from seeking additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party’s
24 confidential information, then the Party shall:

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

28 (2) promptly provide the Non-Party with a copy of the Stipulated

1 Protective Order in this Action, the relevant discovery request(s), and a reasonably
2 specific description of the information requested; and

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

5 (c) If the Non-Party fails to seek a protective order from this court within
6 14 days of receiving the notice and accompanying information, the Receiving Party
7 may produce the Non-Party's confidential information responsive to the discovery
8 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
9 not produce any information in its possession or control that is subject to the
10 confidentiality agreement with the Non-Party before a determination by the court.
11 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
12 of seeking protection in this court of its Protected Material.

13 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
17 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
18 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
19 or persons to whom unauthorized disclosures were made of all the terms of this
20 Order, and (d) request such person or persons to execute the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other protection,
26 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
27 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
28 may be established in an e-discovery order that provides for production without prior

1 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
2 parties reach an agreement on the effect of disclosure of a communication or
3 information covered by the attorney-client privilege or work product protection, the
4 parties may incorporate their agreement in the stipulated protective order submitted
5 to the court.

6 **12. MISCELLANEOUS**

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in this
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any
13 ground to use in evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
16 only be filed under seal pursuant to a court order authorizing the sealing of the
17 specific Protected Material at issue. If a Party's request to file Protected Material
18 under seal is denied by the court, then the Receiving Party may file the information
19 in the public record unless otherwise instructed by the court.

20 **13. FINAL DISPOSITION**

21 After the final disposition of this Action, as defined in paragraph 4, within 60
22 days of a written request by the Designating Party, each Receiving Party must return
23 all Protected Material to the Producing Party or destroy such material. As used in
24 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
25 summaries, and any other format reproducing or capturing any of the Protected
26 Material. Whether the Protected Material is returned or destroyed, the Receiving
27 Party must submit a written certification to the Producing Party (and, if not the same
28 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies

1 (by category, where appropriate) all the Protected Material that was returned or
2 destroyed and (2)affirms that the Receiving Party has not retained any copies,
3 abstracts, compilations, summaries or any other format reproducing or capturing any
4 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
5 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
6 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
7 reports, attorney work product, and consultant and expert work product, even if such
8 materials contain Protected Material. Any such archival copies that contain or
9 constitute Protected Material remain subject to this Protective Order as set forth in
10 Section E (DURATION).

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

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5 **DIEFER LAW GROUP, P.C. and**
6 **LAW OFFICES OF JERRY D.**
7 **UNDERWOOD, A.P.C.**

8 Dated: April 24, 2018

By: /s/ Jerry D. Underwood

Jerry D. Underwood
Marcelo A. Diguez

Attorneys for Plaintiff DIAMOND
BANKS

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13 **BROWN LAW GROUP**

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16 Dated: April 24, 2018

By: /s/ Cody J. Cocanig

Janice P. Brown, Esq.
Stacy L. Fode, Esq.
Cody J. Cocanig, Esq.

Attorneys for Defendants UNITED
PARCEL SERVICE, INC. and
DOLRELL KNIGHT

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23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: May 2, 2018

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26 _____
27 Hon. Sheri Pym
28 United States District Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on _____ [date]
8 in the case of *Diamond Banks v. United Parcel Service, Inc., Darrell Knight, et al.*,
9 Case No. 5:17-cv-02400-AG-SP, pending in the U.S. District Court for the Central
10 District of California. I agree to comply with and to be bound by all the terms of
11 this Stipulated Protective Order and I understand and acknowledge that failure to so
12 comply could expose me to sanctions and punishment in the nature of contempt. I
13 solemnly promise that I will not disclose in any manner any information or item that
14 is subject to this Stipulated Protective Order to any person or entity except in strict
15 compliance with the provisions of this Order.

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

24
25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____