

1 CHRISTOPHER J. BOMAN, Bar No. 198798
 E-mail: cboman@laborlawyers.com
 2 S. SEAN KUNDU, Bar No. 252410
 E-mail: skundu@laborlawyers.com
 3 FISHER & PHILLIPS LLP
 2050 Main Street, Suite 1000
 4 Irvine, California 92614
 Telephone (949) 851-2424
 5 Facsimile (949) 851-0152

6 Attorneys for Defendant
 GENESIS LOGISTICS, INC.

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

11 EDUARDO YANTUCHE,
 12
 13 Plaintiff,
 14 vs.
 15 GENESIS LOGISTICS, INC., a
 Delaware corporation; and DOES 1
 through 20 inclusive.
 16 Defendants.

Case No.: SACV 10-1257-JVS (JCGx)
 [Removed from State Court
 OCSC Case No. 30-2010-00390094]
~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER
 NOTE CHANGES MADE BY THE COURT.
 Scheduling Conference: 12/13/10

19 I. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve
 21 production of confidential, proprietary, or private information for which special
 22 protection from public disclosure and from use for any purpose other than
 23 prosecuting this litigation would be warranted. Accordingly, Plaintiff
 24 EDUARDO YANTUCHE (“Plaintiff”) and Defendant GENESIS LOGISTICS,
 25 INC. (“Defendant”) hereby stipulate to and petition the Court to enter the
 26 following Stipulated Protective Order (“Order”). The parties acknowledge that
 27 this Order does not confer blanket protections on all disclosures or responses to
 28 discovery and that the protection it affords extends only to the limited information

[Proposed] Stipulated Protective Order

1 or items that are entitled under the applicable legal principles to treatment as
2 confidential. The parties further acknowledge, as set forth in Section 10 below,
3 that this Stipulated Protective Order creates no entitlement to file confidential
4 information under seal; Local Rules of Court 79-5.1 of United States District
5 Court, Central District of California sets forth the procedures that must be
6 followed and reflects the standards that will be applied when a party seeks
7 permission from the Court to file material under seal.

8 **II. DEFINITIONS**

9 2.1 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, and outside counsel (and their support
11 staff).

12 2.2 Disclosure or Discovery Material: all items or information,
13 regardless of the medium or manner generated, stored, or maintained (including,
14 among other things, testimony, transcripts, or tangible things) that are produced
15 or generated in disclosures or responses to discovery in this matter.

16 2.3 "Confidential" Information or Items: information (regardless of how
17 generated, stored, or maintained) or tangible things that qualify for protection
18 from disclosure under standards developed under Federal law.

19 2.4 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 2.5 Producing Party: a Party or non-party that produces Disclosure or
22 Discovery Material in this action.

23 2.6 Designating Party: a Party or non-party that designates information
24 or items that it produces in disclosures or in responses to discovery as
25 "Confidential."

26 2.7 Protected Material: any Disclosure or Discovery Material that is
27 designated as "Confidential."

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1 2.8 Outside Counsel: attorneys who are not employees of a Party but
2 who are retained to represent or advise a Party in this action.

3 2.9 In-House Counsel: attorneys who are employees of a Party.

4 2.10 Counsel (without qualifier): Outside Counsel and In-House Counsel
5 (as well as their support staffs).

6 2.11 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its counsel to
8 serve as an expert witness or as a consultant in this action and who is not a past or
9 current employee of a Party or a competitor of a Party's. This definition includes
10 a professional jury or trial consultant retained in connection with this litigation.

11 2.12 Professional Vendors: persons or entities that provide litigation
12 support services (e.g., photocopying; videotaping; translating; preparing exhibits
13 or demonstrations; organizing, storing, retrieving data in any form or medium;
14 etc.) and their employees and subcontractors.

15 **III. SCOPE**

16 The protections conferred by this Order cover not only Protected Material
17 (as defined above), but also any information copied or extracted therefrom, as
18 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
19 conversations, or presentations by parties or counsel to or in court or in other
20 settings that might reveal Protected Material.

21 **IV. DURATION**

22 Even after the termination of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees
24 otherwise in writing or a court order otherwise directs.

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1 **V. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for
3 Protection.

4 Each Party or non-party that designates information or items for protection
5 under this order must take care to limit any such designation to specific material
6 that qualifies under the appropriate standards. A Designating Party must take
7 care to designate for protection only those parts of material, documents, items, or
8 oral or written communications that qualify – so that other portions of the
9 material, documents, or communications for which protection is not warranted are
10 not swept unjustifiably within the ambit of this Order.

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

16 If it comes to a Party's or a non-party's attention that information or items
17 that it designated for protection does not qualify for protection at all, or does not
18 qualify for the level of protection initially asserted, that Party or non-party must
19 promptly notify all other parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations.

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

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of
27 depositions or other pretrial or trial proceedings), that the Producing Party
28 designate such documents as "CONFIDENTIAL" somewhere on the page that

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

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

18 (b) for testimony given in deposition ~~or in other pretrial or trial~~
19 ~~proceedings~~, that the Party or non-party offering or sponsoring the testimony
20 identify on the record, before the close of the deposition, ~~hearing, or other~~
21 ~~proceeding~~, all protected testimony, and further specify any portions of the
22 testimony that qualify as "CONFIDENTIAL." When it is impractical to identify
23 separately each portion of testimony that is entitled to protection, and when it
24 appears that substantial portions of the testimony may qualify for protection, the
25 Party or non-party that sponsors, offers, or gives the testimony may invoke on the
26 record (before the deposition ~~or proceeding~~ is concluded) a right to have up to 20
27 days to identify the specific portions of the testimony as to which protection is
28 sought and to specify the level of protection being asserted ("CONFIDENTIAL").

Should be taken up w/ judicial officer at appropriate time

1 Only those portions of the testimony that are appropriately designated for
2 protection within the 20 days shall be covered by the provisions of this Stipulated
3 Protective Order.

4 Transcript pages containing Protected Material must be separately bound
5 by the court reporter, who must affix to the top of each such page the term
6 "CONFIDENTIAL," as instructed by the Party on non-party offering or
7 sponsoring the witness or presenting the testimony.

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

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items as "CONFIDENTIAL" do not,
17 standing alone, waive the Designating Party's right to secure protection under this
18 Order for such material. If material is appropriately designated as
19 "CONFIDENTIAL" after the material was initially produced, the Receiving
20 Party, on timely notification of the designation, must make reasonable efforts to
21 assure that the material is treated in accordance with the provisions of this Order.

22 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges.

24 Unless a prompt challenge to a Designating Party's confidentiality
25 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
26 economic burdens, or a later significant disruption or delay of the litigation, a
27 Party does not waive its right to challenge a confidentiality designation by
28 electing not to mount a challenge promptly after the original designation is

1 disclosed.

2 6.2 Meet and Confer.

3 A Party that elects to initiate a challenge to a Designating Party's
4 confidentiality designation must do so in good faith and must begin the process
5 by conferring directly (in voice to voice dialogue; other forms of communication
6 are not sufficient) with counsel for the Designating Party. In conferring, the
7 challenging Party must explain the basis for its belief that the confidentiality
8 designation was not proper and must give the Designating Party an opportunity to
9 review the designated material, to reconsider the circumstances, and, if no change
10 in designation is offered, to explain the basis for the chosen designation. A
11 challenging Party may proceed to the next stage of the challenge process only if it
12 has engaged in this meet and confer process first.

13 6.3 Judicial Intervention.

14 A Party that elects to press a challenge to a confidentiality designation after
15 considering the justification offered by the Designating Party may file and serve a
16 motion that identifies the challenged material and sets forth in detail the basis for
17 the challenge. Each such motion must be accompanied by a competent
18 declaration that affirms that the movant has complied with the meet and confer
19 requirements imposed in the preceding paragraph and that sets forth with
20 specificity the justification for the confidentiality designation that was given by
21 the Designating Party in the meet and confer dialogue.

22 The burden of persuasion in any such challenge proceeding shall be on the
23 Designating Party. Until the Court rules on the challenge, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party's designation.

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1 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles.

3 A Receiving Party may use Protected Material that is disclosed or produced
4 by another Party or by a non-party in connection with this case only for
5 prosecuting, defending, or attempting to settle this litigation. Such Protected
6 Material may be disclosed only to the categories of persons and under the
7 conditions described in this Order. When the litigation has been terminated, a
8 Receiving Party must comply with the provisions of section 11, below (FINAL
9 DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

14 Unless otherwise ordered by the Court or permitted in writing by the
15 Designating Party, a Receiving Party may disclose any information or item
16 designated CONFIDENTIAL only to:

17 (a) the Receiving Party's Outside Counsel of record in this action,
18 as well as employees of said Counsel to whom it is reasonably necessary to
19 disclose the information for this litigation and who have signed the "Agreement
20 to Be Bound by Protective Order" that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including In-House
22 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
23 this litigation;

24 (c) experts (as defined by this Order) of the Receiving Party to
25 whom disclosure is reasonably necessary for this litigation and who have signed
26 the "Agreement to Be Bound by Protective Order" (Exhibit A);

27 (d) the Court and its personnel;

28 (e) court reporters, their staffs, and professional vendors to whom

1 disclosure is reasonably necessary for this litigation;

2 (f) during their depositions ~~or during trial~~, witnesses in the action
3 to whom disclosure is reasonably necessary and who have signed the "Agreement
4 to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition
5 testimony or exhibits to depositions that reveal Protected Material must be
6 separately bound by the court reporter and may not be disclosed to anyone except
7 as permitted under this Stipulated Protective Order; and.

8 (g) the author of the document or the original source of the
9 information.

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

12 If a Receiving Party is served with a subpoena or an order issued in other
13 litigation that would compel disclosure of any information or items designated in
14 this action as "CONFIDENTIAL," the Receiving Party must so notify the
15 Designating Party, in writing (by fax, if possible) immediately and in no event
16 more than three court days after receiving the subpoena or order. Such
17 notification must include a copy of the subpoena or court order.

18 The Receiving Party also must immediately inform in writing the Party
19 who caused the subpoena or order to issue in the other litigation that some or all
20 the material covered by the subpoena or order is the subject of this Protective
21 Order. In addition, the Receiving Party must deliver a copy of this Stipulated
22 Protective Order promptly to the Party in the other action that caused the
23 subpoena or order to issue.

24 The purpose of imposing these duties is to alert the interested parties to the
25 existence of this Order and to afford the Designating Party in this case an
26 opportunity to try to protect its confidentiality interests in the court from which
27 the subpoena or order issued. The Designating Party shall bear the burdens and
28 the expenses of seeking protection in that court of its confidential material – and

1 nothing in these provisions should be construed as authorizing or encouraging a
2 Receiving Party in this action to disobey a lawful directive from another court.

3 **IX. 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 Order, the Receiving Party must immediately (a) notify in writing the
7 Designating Party of the unauthorized disclosures, (b) use its best efforts to
8 retrieve all copies of the Protected Material, (c) inform the person or persons to
9 whom unauthorized disclosures were made of all items of this Order, and (d)
10 request such person or persons to execute the "Acknowledgment and Agreement
11 to Be Bound" that it attached hereto as Exhibit A.

12 **X. FILING PROTECTED MATERIAL**

13 Without written permission from the Designating Party or a court order
14 secured after appropriate notice to all interested persons, a Party may not file in
15 the public record in this action any Protected Material. A Party that seeks to file
16 under seal any Protected Material must comply with Local Rules of Court 79-5.1
17 of United States District Court, Central District of California.

18 **XI. FINAL DISPOSITION**

19 Unless otherwise ordered or agreed in writing by the Producing Party,
20 within 60 days after the final termination of this action, each Receiving Party
21 must return all Protected Material to the Producing Party. As used in this
22 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, or any other form of reproducing or capturing any of the Protected
24 Material. With permission in writing from the Designating Party, the Receiving
25 Party may destroy some or all of the Protected Material instead of returning it.
26 Whether the Protected Material is returned or destroyed, the Receiving Party must
27 submit a written certification to the Producing Party (and, if not the same person
28 or entity, to the Designating Party) by the 60 day deadline that identifies (by

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

10 **XII. MISCELLANEOUS**

11 12.1 Right to Assert Other Objections.

12 By stipulating to the entry of this Protective Order, no Party waives any
13 right it otherwise would have to object to disclosing or producing any information
14 or item on any ground not addressed in this Stipulated Protective Order.
15 Similarly, no Party waives any right to object on any ground to use in evidence of
16 any of the material covered by this Protective Order.

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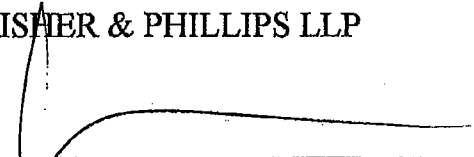
12.2 Right to Further Relief.

Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

Date: November 24, 2010

FISHER & PHILLIPS LLP

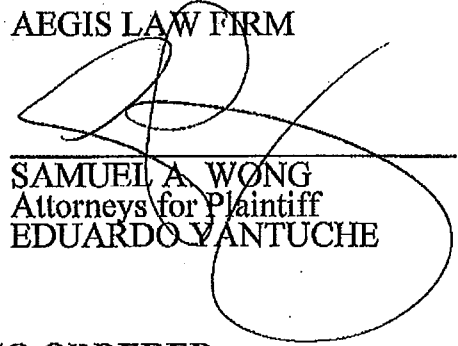
By:


CHRISTOPHER J. BOMAN
S. SEAN KUNDU
Attorneys for Defendant
GENESIS LOGISTICS, INC.

Date: November 24, 2010

AEGIS LAW FIRM

By:


SAMUEL A. WONG
Attorneys for Plaintiff
EDUARDO YANTUCHE

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: 1-7-11


~~Signature~~ United States Magistrate Judge

EXHIBIT A

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ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name] 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, Central District of California on [date] in the case of *Eduardo Yantuche v. Genesis Logistics, Inc.*, Case No. SACV 10-1257-JVS (JCGx). 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, Central 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.

Date: _____

City and State where sworn and signed:

Printed Name

Signature