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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICHARD FONTENBERRY, HUNTER  
BLAINE, and KEITH WARD, on behalf of  
themselves and all others similarly situated,

Case No. 12-CV-01996-JAM-JFM

**PROTECTIVE ORDER**

Plaintiffs,

v.

MV TRANSPORTATION, INC.; and  
DOES 1-20,

Defendants.

IT IS HEREBY ORDERED:

1. Good cause exists for this Joint Stipulation and the issuance by the Court of a Protective Order (“Order”) in that the Parties seek to engage in discovery in the above-captioned lawsuit while providing the Parties with a means for limiting access to, and disclosure of, confidential, private and trade secret information. Because this lawsuit involves Defendant’s compensation information/data, proprietary route information/data and sensitive employee data, Defendant must ensure that some information is kept confidential, and in some cases, viewed only by Plaintiffs’ counsel. Therefore, the Parties agree that the following terms should govern the exchange of information/documents provided in this matter.

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1           2.       Each of the Parties may designate all or portions of any document, thing,  
2 material, testimony or other information derived therefrom as “CONFIDENTIAL” under the terms  
3 of the Order. Material designated as “CONFIDENTIAL” under the Order (“CONFIDENTIAL  
4 INFORMATION”) may be used in accordance with Paragraph 5 herein only for the purpose of  
5 prosecution, defense, discovery, mediation and/or settlement of this action, and not for any other  
6 purpose. CONFIDENTIAL INFORMATION includes: (a) confidential or sensitive proprietary,  
7 business, commercial, private or personal information and (b) information about current, past or  
8 prospective employees that is of a confidential or private nature.

9           3.       Each of the Parties may designate all or portions of any document, thing,  
10 material, testimony, or other information derived therefrom as “ATTORNEYS’ EYES ONLY”  
11 under the terms of the Order. Material designated as “ATTORNEYS EYES ONLY” under the  
12 Order (“ATTORNEYS EYES ONLY MATERIAL”) may be used in accordance with paragraph 8  
13 herein only for the purpose of prosecution, defense, discovery, mediation and/or settlement of this  
14 action and not for any other purpose.

15           4.       CONFIDENTIAL INFORMATION shall be so designated by marking or  
16 stamping copies of the document produced or testimony with the legend “CONFIDENTIAL.”  
17 Marking or stamping the legend “CONFIDENTIAL” on the cover of any multi-page document shall  
18 thereby designate all pages of the document as confidential, and marking or stamping on a label on  
19 any electronic storage medium shall designate the contents of such electronic storage medium as  
20 CONFIDENTIAL INFORMATION. Whether or not any evidence or testimony is, in fact,  
21 designated as “CONFIDENTIAL” shall not be conclusive of whether it is lawfully entitled to  
22 protection as such, and the failure to make such a designation shall not constitute a waiver to do so.  
23 Furthermore, the production of or testimony regarding any CONFIDENTIAL INFORMATION shall  
24 not be considered as a waiver of the right by a Party to object to the admissibility of any such  
25 information, and the admissibility of any such CONFIDENTIAL INFORMATION shall be  
26 determined by the Court independently of the terms of the Order and without regard to whether such  
27 information was produced or provided under the terms of the Order.

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1           5.       CONFIDENTIAL INFORMATION produced pursuant to the Order shall be  
2 disclosed, revealed or disseminated only to (a) the Court (as provided herein) (b) deposition notaries  
3 and staff; (c) stenographic, paralegal, clerical and other employees of the Parties' counsel; (d)  
4 independent experts/consultants who are employed by the Parties' counsel to perform investigative  
5 work, factual research, or other services relating to this action; (e) mediators, solely for use during  
6 the conduct of any mediation of this action; and (f) any other person which the Parties agree to in  
7 writing. Notwithstanding the foregoing, Qualified Persons, as defined below, may review all  
8 Confidential Information but are not entitled to receive copies thereof. "QUALIFIED PERSON(S)"  
9 are designated below:

10                   a.       current or former employees of Defendant who may serve as  
11 witnesses, but only insofar as such CONFIDENTIAL INFORMATION is relevant to their  
12 testimony;

13                   b.       the Named Plaintiffs;

14                   c.       any other person as to whom the Parties agree in writing.

15           6.       Prior to reviewing any CONFIDENTIAL INFORMATION, each  
16 QUALIFIED PERSON designated in Paragraph 5(a)-(c), as well as experts/consultants employed by  
17 the Parties' counsel and mediators, shall execute the Non-Disclosure Agreement in the form set forth  
18 in Attachment A. The Parties shall retain copies of any executed Non-Disclosure Agreements and  
19 deliver a copy thereof to counsel for all the Parties following the adjudication or settlement of this  
20 action.

21           7.       ATTORNEYS' EYES ONLY MATERIAL shall be so designated by marking  
22 or stamping copies of the document produced or testimony with the legend "ATTORNEYS' EYES  
23 ONLY." Marking or stamping the legend "ATTORNEYS' EYES ONLY" on the cover of any  
24 multi-page document shall thereby designate all pages of the document as ATTORNEYS' EYES  
25 ONLY MATERIAL, and marking or stamping on a label on any electronic storage medium shall  
26 designate the contents of such electronic storage medium as ATTORNEYS' EYES ONLY  
27 MATERIAL. Whether or not any evidence or testimony is, in fact, designated as "ATTORNEYS'  
28 EYES ONLY MATERIAL" shall not be conclusive of whether it is lawfully entitled to protection as

1 such, and the failure to make such a designation shall not constitute a waiver to do so. Furthermore,  
2 the production of or testimony regarding any ATTORNEYS' EYES ONLY MATERIAL shall not  
3 be considered as a waiver of the right by a Party to object to the admissibility of such information,  
4 and the admissibility of any such ATTORNEYS' EYES ONLY MATERIAL shall be determined by  
5 the Court independently of the terms of the Order and without regard to whether such information  
6 was produced or provided under the terms of the Order.

7 8. ATTORNEYS' EYES ONLY MATERIAL produced pursuant to the Order  
8 shall be viewed only by the Court, mediators, jurors, and counsel of record for the Parties, their  
9 associate attorneys, paralegals, secretaries and clerical staff, and court reporters or deposition  
10 reporters, and to the persons designated below:

11 a. experts and consultants retained by counsel in the prosecution,  
12 defense, or settlement of this action;

13 b. for the examination at a deposition of an employee or agent of the  
14 Party who designated such information as ATTORNEYS' EYES ONLY MATERIAL;

15 c. any other person as to whom the Parties agree in writing (collectively,  
16 "ATTORNEYS' EYES ONLY QUALIFIED PERSONS").

17 9. Prior to reviewing any ATTORNEYS' EYES ONLY MATERIAL each of the  
18 ATTORNEYS' EYES ONLY QUALIFIED PERSONS identified in paragraph 8(a) through (c) shall  
19 execute the Attorneys' Eyes Only Material Non-Disclosure Agreement in the form of Attachment B.  
20 Counsel for the Parties must retain copies of any executed Attorneys' Eyes Only Material  
21 Non-Disclosure Agreements and must surrender said copies following the adjudication or settlement  
22 of this action as set forth in paragraph 15 herein. Copies of ATTORNEYS' EYES ONLY  
23 MATERIAL may be reproduced, distributed or transmitted only to ATTORNEYS' EYES ONLY  
24 QUALIFIED PERSONS.

25 10. Testimony taken at a deposition may be designated as CONFIDENTIAL  
26 INFORMATION or ATTORNEYS' EYES ONLY MATERIAL by making a statement to that effect  
27 on the record at the deposition. Arrangements shall be made with the deposition reporter taking and  
28 transcribing information designated as CONFIDENTIAL and/or ATTORNEYS' EYES ONLY

1 MATERIAL to bind separately such portions of the deposition transcript, and to label such portions  
2 appropriately. CONFIDENTIAL deposition testimony shall be conducted only before those persons  
3 identified in Paragraph 5(a)-(c) herein. ATTORNEYS' EYES ONLY deposition testimony shall be  
4 conducted only before those persons identified in Paragraph 8(a)-(c) herein. No person other than a  
5 Qualified Person may attend, read the transcript of or the exhibits marked as CONFIDENTIAL in  
6 any deposition taken in this case. No person other than an Attorneys Eyes Only Qualified Person  
7 may attend, read the transcript of or exhibits marked as ATTORNEYS' EYES ONLY in any  
8 deposition taken in this case. Prior to attending any deposition where CONFIDENTIAL deposition  
9 testimony shall be taken, or reviewing CONFIDENTIAL transcript or exhibits, each Qualified  
10 Person listed in Paragraph 5 (a)-(c), as well as experts/consultants employed by the Parties' counsel  
11 and mediators, shall execute a Non-Disclosure Agreement in the form set forth in Attachment A.  
12 Prior to attending any deposition where ATTORNEYS' EYES ONLY testimony shall be taken, or  
13 reviewing any ATTORNEYS' EYES ONLY transcript or exhibits, each Attorneys' Eyes Only  
14 Qualified Person listed in Paragraph 8(a)-(c), as well as experts/consultants employed by the Parties'  
15 counsel and mediators, shall execute the Non-Disclosure Agreement in the form set forth in  
16 Attachment B. Nothing in the Order gives any individual the right to attend a deposition that they  
17 would not otherwise be entitled to attend. Should the need arise to offer testimony at a hearing or  
18 trial to present evidence of CONFIDENTIAL or ATTORNEYS' EYES ONLY MATERIAL, the  
19 Parties will execute a stipulated protective order for that purpose.

20 11. Notwithstanding the foregoing, the Parties do not waive any right to challenge  
21 whether any material designated or not designated as CONFIDENTIAL INFORMATION or  
22 ATTORNEYS' EYES ONLY MATERIAL is properly designated or not designated as such, and do  
23 not waive the right to challenge at any hearing, trial or other proceeding whether such information is,  
24 in fact, confidential or private, or is admissible for any purpose other than as specified by the Order.

25 12. With regard to any CONFIDENTIAL INFORMATION or ATTORNEYS'  
26 EYES ONLY MATERIAL to be filed with the Court, before a party files with the Court any  
27 materials designated by the other party as CONFIDENTIAL INFORMATION or ATTORNEYS'  
28 EYES ONLY MATERIAL, they shall follow the procedure set forth in Federal Rule of Civil

1 Procedure 5.2. Specifically, subject to public policy, and further court order, nothing shall be filed  
2 under seal and the Court shall not be required to take any action, without separate prior order by the  
3 Judge before whom the hearing or proceeding will take place, after application by the affected party  
4 with appropriate notices to opposing counsel. Accordingly, any party who is seeking to file a  
5 document under seal must file a motion, with notice to opposing counsel, in order to obtain the  
6 Court's order in that regards. If the Court grants a Party permission to file an item under seal, a  
7 duplicate disclosing all non-CONFIDENTIAL INFORMATION or non-ATTORNEYS' EYES  
8 ONLY MATERIAL, if any, shall be filed and made part of the public record. The item may be  
9 redacted to eliminate CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY  
10 MATERIAL from the document. The document shall be titled to show that it corresponds to an item  
11 filed under seal, e.g., "Redacted Copy of Sealed Declaration Of John Smith In Support Of Motion  
12 For Summary Judgment." The sealed and redacted documents shall be filed simultaneously.

13           13. If, through inadvertence, any Party produces or offers as testimony any  
14 CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY MATERIAL without labeling  
15 it or otherwise designating it as such, the producing Party may, at any time, give written notice  
16 designating such information as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES  
17 ONLY MATERIAL.

18           14. The terms of the Order shall survive the final termination of this action and  
19 shall be binding on all of the Parties thereafter.

20           15. Within thirty (30) business days of the final termination or settlement of this  
21 action, each party must either destroy or make available for pick-up CONFIDENTIAL  
22 INFORMATION and ATTORNEYS' EYES ONLY MATERIAL received during this litigation  
23 from the other Party and copies of any deposition transcripts designated as CONFIDENTIAL  
24 INFORMATION or ATTORNEYS' EYES ONLY MATERIAL. The Party that provided the  
25 CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY MATERIAL during this  
26 litigation shall notify the Party in possession of the CONFIDENTIAL INFORMATION or  
27 ATTORNEYS' EYES ONLY MATERIAL whether those materials should be destroyed or made  
28 available for pick-up. Upon surrendering to the other side all CONFIDENTIAL INFORMATION,

1 ATTORNEYS' EYES ONLY MATERIAL and/or deposition testimony, the surrendering Party must  
2 also execute and furnish the Surrender of Confidential Information and Attorneys' Eyes Only  
3 Material Agreement in the form set forth in Attachment C. Upon destruction of the  
4 CONFIDENTIAL INFORMATION, ATTORNEYS' EYES ONLY MATERIAL and/or deposition  
5 testimony, the destroying Party must execute and furnish a Certificate of Destruction in the form set  
6 forth in Attachment D. The Party who originally produced the CONFIDENTIAL INFORMATION  
7 and/or ATTORNEYS' EYES ONLY MATERIAL in discovery and who receives return of material  
8 pursuant to this paragraph shall keep and maintain said materials for no less than four (4) years from  
9 the date this case is finally resolved and closed with the Court.

10 16. The Parties expressly agree that, by entering into the Order, they do not waive  
11 any objections to any discovery requests and, further, that they do not agree to the production of any  
12 information or documents, or type or category of information or documents.

13 17. The Order is subject to modification by joint motion of the Parties or by  
14 further order of the Court.

15 DATED: May 8, 2013.

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17 EDMUND F. BRENNAN  
18 UNITED STATES MAGISTRATE JUDGE

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ATTACHMENT A

**CONFIDENTIAL INFORMATION NON-DISCLOSURE AGREEMENT**

The undersigned hereby agrees that:

(1) I have had the opportunity to review the Protective Order (“Order”) in this action.

(2) I agree that I am a “QUALIFIED PERSON” as set forth in the Order.

(3) As a QUALIFIED PERSON, I will not disclose any of the CONFIDENTIAL INFORMATION to any third person and further agree that my use of any CONFIDENTIAL INFORMATION shall only be for the prosecution, defenses, discovery, mediation and/or settlement of this action, and not for any other purpose.

(4) As a “QUALIFIED PERSON” I further agree that on the termination or settlement of this action, I will surrender all CONFIDENTIAL INFORMATION which is in my possession, custody, or control in the manner set forth in paragraph 15 of the Order.

(5) By signing this Confidential Information Non-Disclosure Agreement, I stipulate to the jurisdiction of this Court to enforce the terms of this Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Sign Name]



ATTACHMENT B

**CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL  
NON-DISCLOSURE AGREEMENT**

The undersigned hereby agrees that:

(1) I have had the opportunity to review the Protective Order in this action.

(2) I agree that I am an "ATTORNEYS' EYES ONLY QUALIFIED PERSON" as set forth in the Order.

(3) As an ATTORNEYS' EYES ONLY QUALIFIED PERSON, I will not disclose any of the ATTORNEYS' EYES ONLY MATERIAL to any third person and further agree that my use of any ATTORNEYS' EYES ONLY MATERIAL shall be for the prosecution, defense, discovery, mediation and/or settlement of this action, and not for any other purpose.

(4) As an ATTORNEYS' EYES ONLY QUALIFIED PERSON, I further agree that on the termination or settlement of this action, I will surrender all ATTORNEYS' EYES ONLY MATERIAL which is in my possession, custody, or control in the manner set forth in paragraph 15 of the Order.

(5) By signing this Attorneys' Eyes Only Material Non-Disclosure Agreement, I stipulate to the jurisdiction of this Court to enforce the terms of this Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Sign Name]

ATTACHMENT C

**SURRENDER OF CONFIDENTIAL INFORMATION OR  
ATTORNEYS' EYES ONLY MATERIAL**

The undersigned hereby represents that, pursuant to Paragraph 15 of the Protective Order ("Order"), all CONFIDENTIAL INFORMATION and ATTORNEYS' EYES ONLY MATERIAL within the possession, custody or control of the undersigned was surrendered to the Party designating such information.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Sign Name]

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ATTACHMENT D

**CERTIFICATE OF DESTRUCTION**

The undersigned hereby represents that, pursuant to Paragraph 15 of the Protective Order (“Order”), all CONFIDENTIAL INFORMATION and ATTORNEYS’ EYES ONLY MATERIAL within the possession, custody or control of the undersigned was destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Sign Name]