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7 Attorneys for Defendants
CLIFFORD FRANK PERRY, JR. (erroneously sued
herein as CLIFFORD FRANK PERRY) and
8 KNIGHT TRANSPORTATION, INC.

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 JOY ANN CORCORAN,
13 Plaintiff,
14

15 v.

16 CLIFFORD FRANK PERRY;
KNIGHT TRANSPORTATION,
17 INC. and DOES 1 TO 10,
18 Defendants.

No. 2:13-cv-01511 WBS DAD
STIPULATION AND PROTECTIVE ORDER

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve production of
21 confidential, proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
23 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
24 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
25 all disclosures or responses to discovery and that the protection it affords extends only to the
26 limited information or items that are entitled under the applicable legal principles to treatment as
27 confidential. The parties further acknowledge, as set forth in Section 11, below, that this
28 Stipulated Protective Order creates no entitlement to file confidential information under seal;

1 General Rule 141 sets forth the procedures that must be followed and reflects the standards that
2 will be applied when a party seeks permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Party: Any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and outside counsel (and their support staff).

6 2.2 Disclosure of Discovery Material: All items or information, regardless of
7 the medium or manner generated, stored, or maintained (including, among other things,
8 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
9 responses to discovery in this matter.

10 2.3 “Confidential” Information or Items: Information (regardless of how
11 generated, stored or maintained) or tangible things that qualify for protection under standards
12 developed under F.R.Civ.P. 26(c).

13 2.4 “Highly Confidential—Attorneys’ Eyes Only” Information or Items:
14 Extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
15 non-party would create a substantial risk of serious injury that could not be avoided by less
16 restrictive means.

17 2.5 Receiving Party: A Party that receives Disclosure or Discovery Material
18 from a Producing Party.

19 2.6 Producing Party: A Party or non-party that produces Disclosure or
20 Discovery Material in this action.

21 2.7 Designating Party: A Party or non-party that designates information or
22 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
23 Confidential—Attorneys’ Eyes Only.”

24 2.8 Protected Material: Any Disclosure or Discovery Material that is
25 designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only.”

26 2.9 Outside Counsel: Attorneys who are not employees of a Party but who are
27 retained to represent or advise a Party in this action.

28 2.10 House Counsel: Attorneys who are employees of a Party.

1 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
2 as their support staffs).

3 2.12 Expert: A person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
5 witness or as a consultant in this action and who is not a past or a current employee of a Party or
6 of a competitor of a Party and who, at the time of retention, is not anticipated to become an
7 employee of a Party or a competitor of a Party. This definition includes a professional jury or
8 trial consultant retained in connection with this litigation.

9 2.13 Professional Vendors: Persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations;
11 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
12 subcontractors.

13 3. SCOPE

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

18 4. DURATION

19 Even after the termination of this litigation, the confidentiality obligations imposed by this
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
21 otherwise directs. However, the protections conferred by this Stipulation and Order do not cover
22 the following information: (a) any information that is in the public domain after its disclosure to a
23 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
24 a result of publication not involving a violation of this Order, including becoming part of the
25 public record through trial or otherwise; and (b) any information known to the Receiving Party
26 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
27 obtained the information lawfully and under no obligation of confidentiality to the Designating
28 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

1 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
18 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
19 material that qualifies for protection under this Order must be clearly so designated before the
20 material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (apart from the transcripts of
23 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” on each
25 page that contains protected material. If only a portion or portions of the material on a page
26 qualified for protection, the Producing Party also must clearly identify the protected portion(s)
27 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
28 level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—

1 ATTORNEYS' EYES ONLY").

2 A Party or non-party that makes original documents or materials available for inspection
3 need not designate them for protection until after the inspecting Party has indicated which
4 material it would like copied and produced. During the inspection and before the designation, all
5 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL—
6 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or portions thereof,
8 qualify for protection under this Order, then, before producing the specified documents, the
9 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
10 CONFIDENTIAL—ATTORNEYS' EYES ONLY") on each page that contains Protected
11 Material. If only a portion or portions of the material on a page qualified for protection, the
12 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
13 markings in the margins) and must specify, for each portion, the level of protection being asserted
14 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY").

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,
16 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
17 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
18 any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL—ATTORNEYS'
19 EYES ONLY." When it is impractical to identify separately each portion of testimony that is
20 entitled to protection, and when it appears that substantial portions of the testimony may qualify
21 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke a
22 right to have up to 30 days to identify the specific portions of the testimony as to which protection
23 is sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL—ATTORNEYS' EYES ONLY"). Only those portions of the testimony that
25 are appropriately designated for protection within the 30 days shall be covered by the provisions
26 of this Stipulated Protective Order.

1 Transcript pages containing Protected Material must be separately bound by the court
2 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-
4 party offering or sponsoring the witness or presenting the testimony.

5 (c) for information produced in some form other than documentary, and for
6 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
7 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
8 or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only portions of the
9 information or item warrant protection, the Producing Party, to the extent practicable, shall
10 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly
11 Confidential—Attorneys’ Eyes Only.”

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items as “Confidential” or “Highly Confidential—
14 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
15 protection under this Order for such material. If material is appropriately designated as
16 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” after the material was initially
17 produced, the Receiving Party, on timely notification of the designation, must make reasonable
18 efforts to assure that the material is treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
21 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
22 economic burdens, or a later significant disruption or delay of this litigation, a Party does not
23 waive its right to challenge a confidentiality designation by electing not to mount a challenge
24 promptly after the original designation is disclosed.

25 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
26 Designating Party’s confidentiality designation must do so in good faith and must begin the
27 process by conferring directly (in voice to voice dialogue; other forms of communication are not
28 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must

1 explain the basis for its belief that the confidentiality designation was not proper and must give
2 the Designating Party an opportunity to review the designated material, to reconsider the
3 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
4 designation. A challenging Party may proceed to the next stage of the challenge process only if it
5 has engaged in this meet and confer process first.

6 6.3 Judicial Intervention. A Party that elects to press a challenge to a
7 confidentiality designation after considering the justification offered by the Designating Party
8 may file and serve a motion under Civil Local Rule 251 (and in compliance with General
9 Rule 141, if applicable) that identifies the challenged material and sets forth in detail the basis
10 for the challenge. Each such motion must be accompanied by a competent declaration that
11 affirms the movant has complied with the meet and confer requirements imposed in the preceding
12 paragraph and that sets forth with specificity the justification for the confidentiality designation
13 that was given by the Designating Party in the meet and confer dialogue.

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

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a non-party in connection with this case only for
20 prosecuting, defending, or attempting to settle this litigation. Such Protected Materials may be
21 disclosed only to the categories of persons and under the conditions described in this Order.
22 When the litigation has been terminated, a Receiving Party must comply with the provisions of
23 section 12, below (FINAL DISPOSITION).

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
28 disclose any information or item designated CONFIDENTIAL only to:

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

5 (b) the officers, directors, and employees (including House Counsel) of the
6 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
7 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
10 Bound by Protective Order" (Exhibit A);

11 (d) the Court and its personnel;

12 (e) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
14 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
15 Protected Material must be separately bound by the court reporter and may not be disclosed to
16 anyone except as permitted under this Stipulated Protective Order.

17 (f) the author of the document or the original source of the information.

18 7.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
19 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by
20 the Designating Party, a Receiving Party may disclose any information or item designated
21 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" only to:

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

26 (b) experts (as defined in this Order) (1) to whom disclosure is reasonably
27 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective
28 Order" (Exhibit A);

1 (c) the Court and its personnel;

2 (d) the author of the document or the original source of the information.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a Receiving Party is served with a subpoena or an order issued in other litigation that
6 would compel disclosure of any information or items designated in this action as
7 “CONFIDENTIAL” or “HIGH CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” the
8 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
9 and in no event more than three court days after receiving the subpoena or order. Such
10 notification must include a copy of the subpoena or court order.

11 The Receiving Party also must immediately inform in writing the Party who caused the
12 subpoena or order to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
14 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
15 caused the subpoena or order to issue.

16 The purpose of imposing these duties is to alert the interested parties to the existence of
17 this Protective Order and to afford the Designating Party in this case an opportunity to try to
18 protect its confidentiality interests in the court from which the subpoena or order issued. The
19 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
20 confidential material—and nothing in these provisions should be construed as authorizing or
21 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

22 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
23 PROTECTED MATERIAL

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

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

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 11. FILING PROTECTED MATERIAL

14 Without written permission from the Designating Party or a court order secured after
15 appropriate notice to all interested persons, a Party may not file in the public record in this action
16 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
17 with General Rule 141.

18 12. FINAL DISPOSITION

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

1 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
2 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
3 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
4 work product, even if such materials contain Protected Material. Any such archival copies that
5 contain or constitute Protected Material remain subject to this Protect Order as set forth in
6 Section 4 (DURATION), above.

7 13. MISCELLANEOUS

8 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 13.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to disclosing or
12 producing any information or item on any ground not addressed in this Stipulated Protective
13 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
14 the material covered by this Protective Order.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 ALTEMUS & WAGNER

17 /s/ Stewart Altemus

18 DATED: June 2, 2014

19 STEWART ALTEMUS
Attorneys for Plaintiff
JOY ANN CORCORAN

20 ARCHER NORRIS

21 /s/ Derek H. Lim

22 DATED: June 2, 2014

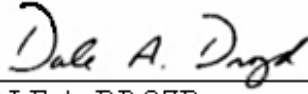
23 DEREK H. LIM
Attorneys for Defendants
CLIFFORD FRANK PERRY, JR. (erroneously sued
24 herein as CLIFFORD FRANK PERRY) and
25 KNIGHT TRANSPORTATION, INC.

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ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.¹

Dated: June 3, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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¹ Although the parties' stipulation refers to "General Rule 141," it is apparent that the parties are referring to Local Rule 141.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], 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 for the Eastern District of California on _____ [date] in the case of Joy Ann Corcoran v. Clifford Frank Perry, et al., United States Eastern District Court Case No. 2:13-CV-01511-WBS-DAD. 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 for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after the termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]