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 SWIFT TRANSPORTATION CO. OF ARIZONA,  
 8 LLC

9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION  
 11

12 JAMES HUDSON,  
 13 Plaintiff,

14 v.

15 SWIFT TRANSPORTATION CO. OF  
 ARIZONA, LLC, and DOES 1 through 50,  
 16 inclusive,  
 17 Defendant.

Fed. Case No. 2:16-CV-01291-MCE-DB  
 [Honorable Morrison C. England, Jr.]

**STIPULATED PROTECTIVE ORDER**

18  
 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 may 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 from public disclosure  
 26 and use extends only to the limited information or items that are entitled to confidential treatment  
 27 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
 28

1 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential  
2 information under seal; Civil Local Rule 141 and Hon. Judge Kimberly J. Mueller’s Standing  
3 Orders set forth the procedures that must be followed and the standards that will be applied when  
4 a party seeks permission from the court to file material under seal.

5 **2. DEFINITIONS**

6 **2.1 Challenging Party:** a Party or Non-Party that challenges the designation of  
7 information or items under this Order.

8 **2.2 “CONFIDENTIAL” Information or Items:** information (regardless of how it is  
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
10 of Civil Procedure 26(c).

11 **2.3 Counsel (without qualifier):** Outside Counsel of Record and House Counsel (as  
12 well as their support staff).

13 **2.4 Designating Party:** a Party or Non-Party that designates information or items that  
14 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

16 **2.5 Disclosure or Discovery Material:** all items or information, regardless of the  
17 medium or manner in which it is generated, stored, or maintained (including, among other things,  
18 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
19 responses to discovery in this matter.

20 **2.6 Expert:** a person with specialized knowledge or experience in a matter pertinent to  
21 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
22 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s  
23 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
24 or of a Party’s competitor.

25 **2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or**  
26 **Items:** extremely sensitive “Confidential Information or Items,” disclosure of which to another  
27 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
28 less restrictive means.

1           **2.8**    House Counsel: attorneys who are employees of a party to this action. House  
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3           **2.9**    Non-Party: any natural person, partnership, corporation, association, or other legal  
4 entity not named as a Party to this action.

5           **2.10** Outside Counsel of Record: attorneys who are not employees of a party to this  
6 action but are retained to represent or advise a party to this action and have appeared in this action  
7 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

8           **2.11** Party: any party to this action, including all of its officers, directors, employees,  
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10          **2.12** Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
11 Material in this action.

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

16          **2.14** Protected Material: any Disclosure or Discovery Material that is designated as  
17 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18          **2.15** Receiving Party: a Party that receives Disclosure or Discovery Material from a  
19 Producing Party.

### 20           **3.     SCOPE**

21           The protections conferred by this Stipulation and Order cover not only Protected Material  
22 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
23 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
24 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
25 However, the protections conferred by this Stipulation and Order do not cover the following  
26 information: (a) any information that is in the public domain at the time of disclosure to a  
27 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
28 a result of publication not involving a violation of this Order, including those who obtained the

1 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
2 of becoming part of the public record through trial or otherwise; and (b) any information known  
3 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
4 disclosure from a source Protected Material at trial shall be governed by a separate agreement or  
5 order.

#### 6 **4. DURATION**

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

#### 14 **5. DESIGNATING PROTECTED MATERIAL**

15 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party  
16 or Non-Party that designates information or items for protection under this Order must take care  
17 to limit any such designation to specific material that qualifies under the appropriate standards.  
18 To the extent it is practical to do so, the Designating Party must designate for protection only  
19 those parts of material, documents, items, or oral or written communications that qualify – so that  
20 other portions of the material, documents, items, or communications for which protection is not  
21 warranted are not swept unjustifiably within the ambit of this Order.

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

26 If it comes to a Designating Party's attention that information or items that it designated  
27 for protection do not qualify for protection at all or do not qualify for the level of protection  
28 initially asserted, that Designating Party must promptly notify all other parties that it is

1 withdrawing the mistaken designation.

2 **5.2** Manner and Timing of Designations. Except as otherwise provided in this Order  
3 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

4 Disclosure or Discovery

5 Material that qualifies for protection under this Order must be clearly so designated before  
6 the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents, but  
9 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
10 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
11 EYES ONLY” to each page that contains protected material. If only a portion or portions of the  
12 material on a page qualifies for protection, the Producing Party also must clearly identify the  
13 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
14 each portion, the level of protection being asserted.

15 A Party or Non-Party that makes original documents or materials available for inspection  
16 need not designate them for protection until after the inspecting Party has indicated which  
17 material it would like copied and produced. During the inspection and before the designation, all  
18 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
20 copied and produced, the Producing Party must determine which documents, or portions thereof,  
21 qualify for protection under this Order. Then, before producing the specified documents, the  
22 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY) to each page that contains Protected Material.  
24 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
25 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
26 margins) and must specify, for each portion, the level of protection being asserted.

27 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
28 Designating Party identify on the record, before the close of the deposition, hearing, or other

1 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
2 impractical to identify separately each portion of testimony that is entitled to protection and it  
3 appears that substantial portions of the testimony may qualify for protection, the Designating  
4 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
5 a right to have up to 21 days to identify the specific portions of the testimony as to which  
6 protection is sought and to specify the level of protection being asserted. Only those portions of  
7 the testimony that are appropriately designated for protection within the 21 days shall be covered  
8 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
9 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
10 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY.”

12 **Parties shall give the other parties notice if they reasonably expect a deposition,**  
13 **hearing or other proceeding to include Protected Material so that the other parties can**  
14 **ensure that only authorized individuals who have signed the “Acknowledgment and**  
15 **Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a**  
16 **document as an exhibit at a deposition shall not in any way affect its designation as**  
17 **“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”**

18 **Transcripts containing Protected Material shall have an obvious legend on the title**  
19 **page that the transcript contains Protected Material, and the title page shall be followed by**  
20 **a list of all pages (including line numbers as appropriate) that have been designated as**  
21 **Protected Material and the level of protection being asserted by the Designating Party. The**  
22 **Designating Party shall inform the court reporter of these requirements. Any transcript**  
23 **that is prepared before the expiration of a 21-day period for designation shall be treated**  
24 **during that period as if it had been designated “HIGHLY CONFIDENTIAL –**  
25 **ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration**  
26 **of that period, the transcript shall be treated only as actually designated.**

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

50519001/4810-9499-7046-1

1 or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of  
3 the information or item warrant protection, the Producing Party, to the extent practicable, shall  
4 identify the protected portion(s) and specify the level of protection being asserted.

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

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 **6.1** Timing of Challenges. Any Party or Non-Party may challenge a designation of  
12 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
14 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
16 original designation is disclosed.

17 **6.2** Meet and Confer. The Challenging Party shall initiate the dispute resolution  
18 process by providing written notice of each designation it is challenging and describing the basis  
19 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
20 notice must recite that the challenge to confidentiality is being made in accordance with this  
21 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
22 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
23 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
24 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
25 designation was not proper and must give the Designating Party an opportunity to review the  
26 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
27 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
28 stage of the challenge process only if it has engaged in this meet and confer process first or

1 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
2 a timely manner.

3           **6.3**     Judicial Intervention. If the Parties cannot resolve a challenge without court  
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under (in  
5 compliance with Civil Local Rule 141 and Hon. Judge Kimberly J. Mueller’s Standing Orders)  
6 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
7 meet and confer process will not resolve their dispute, whichever is earlier. Each such motion  
8 must be accompanied by a competent declaration affirming that the movant has complied with the  
9 meet and confer requirements imposed in the preceding paragraph and in compliance with the  
10 Standing Orders. Failure by the Designating Party to make such a motion including the required  
11 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
12 designation for each challenged designation. The parties agree to shift the burden to move on the  
13 Challenging Party after one (1) challenge has been made to avoid an abuse of the process. The  
14 burden of persuasion remains on the Designating Party. Whether it is the Challenging Party’s  
15 burden to move or not, the Challenging Party may file a motion challenging a confidentiality  
16 designation at any time if there is good cause for doing so, including a challenge to the  
17 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to  
18 this provision must be accompanied by a competent declaration affirming that the movant has  
19 complied with the meet and confer requirements imposed by the preceding paragraph.

20           The burden of persuasion in any such challenge proceeding shall be on the Designating  
21 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
22 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
23 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
24 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
25 material in question the level of protection to which it is entitled under the Producing Party’s  
26 designation until the court rules on the challenge.

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

28           **7.1**     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
S0519001/4810-9499-7046-1



1 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
2 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
3 the categories of persons and under the conditions described in this Order. When the litigation has  
4 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
5 DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a location and  
7 in a secure manner<sup>1</sup> that ensures that access is limited to the persons authorized under this Order.

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

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
12 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
13 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
14 Bound” that is attached hereto as Exhibit A;

15 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
16 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff, professional jury or trial consultants, and  
23 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
26 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

27 \_\_\_\_\_  
28 <sup>1</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in  
password-protected form.  
5051900174810-9499-7046-1

1 unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
2 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
3 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
4 under this Stipulated Protective Order.

5 (g) the author or recipient of a document containing the information or a custodian or  
6 other person who otherwise possessed or knew the information.

7 **7.3** Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
8 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
9 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
12 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
13 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
14 Bound” that is attached hereto as Exhibit A;

15 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for  
16 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
17 A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been  
18 followed;

19 (c) the court and its personnel;

20 (d) court reporters and their staff, professional jury or trial consultants, and  
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

23 (e) the author or recipient of a document containing the information or a custodian or  
24 other person who otherwise possessed or knew the information.

25 **7.4** Procedures for Approving or Objecting to Disclosure of “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

27 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
28 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item

1 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant  
2 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies  
3 the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
4 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the  
5 full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy  
6 of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each  
7 person or entity from whom the Expert has received compensation or funding for work in his or  
8 her areas of expertise or to whom the expert has provided professional services, including in  
9 connection with a litigation, at any time during the preceding five years,<sup>2</sup> and (6) identifies (by  
10 name and number of the case, filing date, and location of court) any litigation in connection with  
11 which the Expert has offered expert testimony, including through a declaration, report, or  
12 testimony at a deposition or trial, during the preceding five years.<sup>3</sup>

13 (b) A Party that makes a request and provides the information specified in the  
14 preceding respective paragraphs may disclose the subject Protected Material to the identified  
15 Expert unless, within 14 days of delivering the request, the Party receives a written objection  
16 from the Designating Party. Any such objection must set forth in detail the grounds on which it is  
17 based.

18 (c) A Party that receives a timely written objection must meet and confer with the  
19 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
20 agreement within seven days of the written objection. If no agreement is reached, the Party  
21 seeking to make the disclosure to the Expert may file a motion (in compliance with Civil Local  
22 Rule 141) seeking permission from the court to do so. Any such motion must describe the  
23 circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is  
24 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any

25 \_\_\_\_\_  
26 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should  
27 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party  
28 seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

<sup>3</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the  
termination of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY  
CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.  
S0519001/4810-9499-7046-1 1

1 additional means that could be used to reduce that risk. In addition, any such motion must be  
2 accompanied by a competent declaration describing the parties' efforts to resolve the matter by  
3 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth  
4 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

5 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
6 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
7 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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

10 If a Party is served with a subpoena or a court order issued in other litigation that compels  
11 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
20 Designating Party whose Protected Material may be affected.<sup>4</sup>

21 If the Designating Party timely seeks a protective order, the Party served with the  
22 subpoena or court order shall not produce any information designated in this action as  
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a  
24 determination by the court from which the subpoena or order issued, unless the Party has obtained  
25 the Designating Party's permission. The Designating Party shall bear the burden and expense of  
26

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27 <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the  
28 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or  
order issued.

1 seeking protection in that court of its confidential material – and nothing in these provisions  
2 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a  
3 lawful directive from another court.

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

6 (a) The terms of this Order are applicable to information produced by a Non-Party in  
7 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with  
9 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
10 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

20 3. Make the information requested available for inspection by the Non-Party.

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

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S0519001/4810-9499-7046-1

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

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

9           **11.    INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
10           **PROTECTED MATERIAL**

11           When a Producing Party gives notice to Receiving Parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). If  
14 information is produced in discovery that is subject to a claim of privilege or of protection as  
15 trial-preparation material, the party making the claim may notify any party that received the  
16 information of the claim and the basis for it. After being notified, a party must promptly return or  
17 destroy the specified information and any copies it has and may not sequester, use or disclose the  
18 information until the claim is resolved. This includes a restriction against presenting the  
19 information to the court for a determination of the claim. This provision is not intended to modify  
20 whatever procedure may be established in an e-discovery order that provides for production  
21 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
22 parties reach an agreement on the effect of disclosure of a communication or information covered  
23 by the attorney-client privilege or work product protection, the parties may incorporate their  
24 agreement in the stipulated protective order submitted to the court.

25           **12.    MISCELLANEOUS**

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

28           **12.2   Right to Assert Other Objections.** By stipulating to the entry of this Protective

1 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
2 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
3 Party waives any right to object on any ground to use in evidence of any of the material covered  
4 by this Protective Order.

5 **12.3** Filing Protected Material. Without written permission from the Designating Party  
6 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
7 the public record in this action any Protected Material. A Party that seeks to file under seal any  
8 Protected Material must comply with Civil Local Rule 141 and Hon. Judge Kimberly J. Mueller’s  
9 Standing Orders. Protected Material may only be filed under seal pursuant to a court order  
10 authorizing the sealing of the specific Protected Material at issue.

11 **13. FINAL DISPOSITION**

12 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
13 Receiving Party must return all Protected Material to the Producing Party or destroy such  
14 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
15 compilations, summaries, and any other format reproducing or capturing any of the Protected  
16 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
17 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
18 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
19 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
20 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
21 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
22 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
23 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
24 product, and consultant and expert work product, even if such materials contain Protected  
25 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
26 this Protective Order as set forth in Section 4 (DURATION).

27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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Dated: August 19, 2016

LAW OFFICES OF T. JAMES FISHER

/s/ T. James Fisher  
T. James Fisher  
Attorneys for Plaintiff  
JAMES HUDSON

Dated: August 19, 2016

ARCHER NORRIS


/s/ Derek H. Lim  
Derek H. Lim  
Chad D. Greeson  
Attorneys for Defendant  
SWIFT TRANSPORTATION CO. OF  
ARIZONA, LLC

**ORDER**

The foregoing agreement is approved.

IT IS SO ORDERED.

Dated: August 26, 2016

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE