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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

TERRY BOWMAN and MARIO SOTO,  
individually, and on behalf of other members of  
the general public similarly situated;

Plaintiff,

v.

ABF FREIGHT SYSTEM, INC., an Arkansas  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 2:21-CV-02342-KJM-JDP

Judge: Hon. Kimberly J. Mueller

**~~PROPOSED~~ STIPULATED PROTECTIVE  
ORDER**

Complaint Filed: September 7, 2021  
Removed on: October 8, 2021  
FAC Filed: November 12, 2021  
Trial Date: None

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action may involve production of confidential, proprietary or private  
3 information for which special protection from public disclosure and from use for any purpose other  
4 than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and  
5 petition the Court to enter the following Stipulated Protective Order.

6  
7 B. GOOD CAUSE STATEMENT

8 This action may involve confidential commercial, financial, and/or proprietary information for  
9 which special protection from public disclosure and from use for any purpose other than prosecution  
10 of this action is warranted. Such confidential and proprietary materials and information consist of,  
11 among other things, confidential business or financial information, information regarding confidential  
12 business practices, other confidential commercial information (including information implicating  
13 privacy rights of third parties), information otherwise generally unavailable to the public, or which  
14 may be privileged or otherwise protected from disclosure under state or federal statutes, court rules,  
15 case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the  
16 prompt resolution of disputes over confidentiality of discovery materials, to adequately protect  
17 information the parties are entitled to keep confidential, to ensure that the parties are permitted  
18 reasonable necessary uses of such material in preparation for and in the conduct of trial, to address  
19 their handling at the end of the litigation, and serve the ends of justice, a protective order for such  
20 information is justified in this matter.

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22 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

23 The parties further acknowledge, as set forth in Section 12.1, below, that this Stipulated  
24 Protective Order does not entitle them to file confidential information under seal; Local Civil Rule  
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1 141 sets forth the procedures that must be followed and the standards that will be applied when a Party  
2 seeks permission from the court to file material under seal.

3 Further, the Parties acknowledge Judge Mueller’s Standing Order which provides as follows:

4  
5 No document will be sealed, nor shall a redacted document be filed, without the  
6 prior approval of the court. If a document for which sealing or redaction is sought  
7 relates to the record on a motion to be decided by Judge Mueller, the request to seal  
8 or redact should be directed to her and not the assigned Magistrate Judge. All  
9 requests to seal or redact shall be governed by Local Rules 141 (sealing) and 140  
10 (redaction); protective orders covering the discovery phase shall not govern the  
11 filing of sealed or redacted documents on the public docket. The court will only  
12 consider requests to seal or redact filed by the proponent of sealing or redaction.  
13 This means that if a party plans to make a filing that includes material an opposing  
14 party has identified as confidential and potentially subject to sealing, the filing party  
15 shall provide the opposing party with sufficient notice in advance of filing to allow  
16 for the opposing party to seek an order of sealing or redaction from the court

17  
18 2. DEFINITIONS

19 2.1 Action: This action pending in the Eastern District of California, titled *Bowman v.*  
20 *ABF Freight System, Inc.*, Case No. 2:21-CV-02342-KJM-JDP.

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

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

26 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as their support  
27 staff).

28 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

1           2.7     Expert: a person with specialized knowledge or experience in a matter pertinent to the  
2 litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a  
3 consultant in this Action.

4           2.8     In-House Counsel: attorneys who are employees of a Party to this Action and their  
5 support staff. In-House Counsel does not include Outside Counsel of Record or any other outside  
6 counsel.

7           2.9     Non-Party: any natural person, partnership, corporation, association or other legal  
8 entity not named as a Party to this action.

9           2.10    Outside Counsel of Record: attorneys who are not employees of a Party to this Action  
10 but are retained to represent or advise a Party to this Action and have appeared in this Action on  
11 behalf of that Party or are affiliated with a law firm that has appeared on behalf of that Party, and  
12 includes support staff.

13           2.11    Party: any person named as a plaintiff or defendant in this Action and Outside  
14 Counsel of Record (and their support staffs).

15           2.12    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
16 Material in this Action.

17           2.13    Professional Vendors: persons or entities that provide litigation support services (e.g.,  
18 photocopying, videotaping, translating, transcription, preparing exhibits or demonstrations, and  
19 organizing, storing, or retrieving data in any form or medium) and their employees and  
20 subcontractors.

21           2.14    Protected Material: any Disclosure or Discovery Material that is designated as  
22 “CONFIDENTIAL.”

23           2.15    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
24 Producing Party.

1 3. SCOPE

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

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

8  
9 4. DESIGNATING PROTECTED MATERIAL

10 4.1 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
12 Discovery Material that qualifies for protection under this Order must be clearly so designated.

13 Designation in conformity with this Order requires:

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

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

3 (b) for testimony given in depositions that the Designating Party identifies the Disclosure  
4 or Discovery Material on the record, before the close of the deposition all protected testimony. Any  
5 Party also may designate testimony that is entitled to protection by notifying all Parties in writing  
6 within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript which  
7 should be treated as “CONFIDENTIAL” thereafter. Each Party shall attach a copy of such written  
8 notice or notices to the face of the transcript and each copy thereof in its possession, custody or control.  
9 Unless otherwise indicated, all deposition transcripts shall be treated as “CONFIDENTIAL” for a  
10 period of thirty (30) days after the receipt of the transcript. This preliminary treatment, however, shall  
11 not limit a deponent’s right to review the transcript of his or her deposition under Federal Rule of Civil  
12 Procedure 30(e)(1).

13 (c) for information produced in some form other than documentary and for any other  
14 tangible items, or that cannot be labeled on each page, that the Producing Party affix in a prominent  
15 place on the exterior of the container or containers in which the information is stored the legend  
16 “CONFIDENTIAL” or otherwise clearly indicate that the information is to be treated as  
17 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the  
18 Producing Party, to the extent practicable, shall identify the protected portion(s).

19 4.2 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
20 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
21 to secure protection under this Order for such material. Upon timely correction of a designation, the  
22 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
23 the provisions of this Order.

24 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 5.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
26 confidentiality at any time that is consistent with the Court’s Scheduling Order.

27 5.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
28 under Local Rule 251(b).

1           5.3     Joint Stipulation. Any challenge submitted to the Court shall be via a joint stipulation  
2 pursuant to Local Rule 251(c).

3           5.4     The burden of persuasion in any such challenge proceeding shall be on the Designating  
4 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
6 Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall  
7 continue to afford the material in question the level of protection to which it is entitled under the  
8 Producing Party’s designation until the Court rules on the challenge.

9  
10         6.     ACCESS TO AND USE OF PROTECTED MATERIAL

11           6.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
12 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,  
13 defending or attempting to settle this Action. Such Protected Material may be disclosed only to the  
14 categories of persons and under the conditions described in this Order. When the Action has been  
15 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
16 DISPOSITION).

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

19           6.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
20 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
21 information or item designated “CONFIDENTIAL” only to:

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

24                   (b) the officers, directors, and current employees of the Receiving Party to whom  
25 disclosure is reasonably necessary for this Action;

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

1 (d) the court and its personnel;  
2 (e) court reporters and their staff;  
3 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom  
4 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and  
5 Agreement to Be Bound” (Exhibit A);

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

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

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

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20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
21 LITIGATION

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

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

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

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

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

13  
14 8. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
15 LITIGATION

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

21  
22 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

3  
4 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
5 MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
7 material is subject to a claim of privilege or other protection, the Parties shall follow the procedures  
8 set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify any  
9 other procedure that may be established in an e-discovery order agreed to by the parties to this Action  
10 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502,  
11 the disclosure of privileged or other protected material does not operate as a waiver of such privilege  
12 if: (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps  
13 to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error, including  
14 following Federal Rule of Civil Procedure 26(b)(5)(B)(d) and (e).

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16 11. MISCELLANEOUS

17 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
18 its modification by the Court in the future or to seek different or additional relief than that provided  
19 herein.

20 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order,  
21 no Party waives any right it otherwise would have to object to disclosing or producing any information  
22 or item on any ground. Similarly, no Party waives any right to object on any ground to use in evidence  
23 any of the material covered by this Protective Order.

24  
25 12. PROCEDURES FOR FILING PROTECTED MATERIALS

26 12.1 Filing Protected Material. No document will be sealed, nor shall a redacted document  
27 be filed, without the prior approval of the court. If a document for which sealing or redaction is sought  
28 relates to the record on a motion to be decided by Judge Mueller, the request to seal or redact should

1 be directed to her and not the assigned Magistrate Judge. All requests to seal or redact shall be  
2 governed by Local Rules 141 (sealing) and 140 (redaction); protective orders covering the discovery  
3 phase shall not govern the filing of sealed or redacted documents on the public docket. The court will  
4 only consider requests to seal or redact filed by the proponent of sealing or redaction. This means that  
5 if a Party plans to make a filing that includes material an opposing Party has identified as confidential  
6 and potentially subject to sealing, the filing Party shall provide the opposing Party with sufficient  
7 notice in advance of filing to allow for the opposing Party to seek an order of sealing or redaction from  
8 the court. Should an opposing Party fail to do so, that Party may not file the Protected Materials until  
9 the Designating Party has a sufficient opportunity to seek an order from the Court to seal the Protected  
10 Materials.

11 12.2 If a Party’s request to file Protected Material under seal is denied by the court, then the  
12 Receiving Party may file the information in the public record unless otherwise instructed by the court.

13  
14 13. FINAL DISPOSITION

15 After the final disposition of this Action, which shall include the disposition of any appeals  
16 that may be taken or the expiration of the time period in which to file a timely appeal expires, each  
17 Receiving Party must return all Protected Material to the Producing Party or destroy such material  
18 within 60 days of a written request by the Designating Party. As used in this subdivision, “all Protected  
19 Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing  
20 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
22 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
23 consultant and expert work product, even if such materials contain Protected Material. Any such  
24 archival copies that contain or constitute Protected Material shall remain subject to this Protective  
25 Order.

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14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

DATED: August 11, 2022

JUSTICE LAW CORPORATION

By: /s/ Jason Rothman

Douglas Han  
Shunt Tatavos-Gharajeh  
Jason Rothman  
Attorneys for Plaintiffs Terry Bowman  
and Mario Soto

DATED: August 11, 2022

HUNTON ANDREWS KURTH LLP

By /s/ Emily Burkhardt Vicente

Emily Burkhardt Vicente  
Steven A. Morphy  
Karen Evans  
Attorneys for Defendant ABF Freight  
Systems, Inc.

**PURSUANT TO STIPULATION,**

IT IS SO ORDERED.

Dated: November 20, 2022

  
\_\_\_\_\_  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE

**Hunton Andrews Kurth LLP**  
50 California Street, Suite 1700  
San Francisco, California 94111

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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 *Bowman v. ABF Freight System, Inc.*, Case No. 2:21-CV-02342-KJM-JDP. 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 enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_