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RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

10 Attorneys for Plaintiff City of Oakland,
 11 A Municipal Corporation, Acting By and
 12 Through Its Board of Port Commissioners

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 CITY OF OAKLAND, a Municipal
 16 Corporation, Acting By and Through Its
 Board of Port Commissioners

Case No.: C11-01446 YGR

JOINT PROTECTIVE ORDER

17 Plaintiff,

18 vs.

19 SSA TERMINALS, LLC, SSA TERMINALS
 20 (OAKLAND), LLC and DOES 1 through 50,
 inclusive,

21 Defendant.

22 SSA TERMINALS, LLC; SSA TERMINALS
 (OAKLAND), LLC,

23 Counterclaimants,

24 vs.

25 CITY OF OAKLAND and Does 1 through 10,

26 Counter-Defendants.

1 Plaintiff City of Oakland, a Municipal Corporation, Acting By and Through its Board of
2 Port Commissioners (the "Port") filed against Defendants SSA Terminals, LLC and SSA
3 Terminals (Oakland), LLC ("SSAT") seeking declaratory relief. SSAT filed its counterclaim
4 seeking damages. The parties recognize that this case may involve the exchange and production
5 of highly sensitive, proprietary business information belonging to themselves and the Port's
6 other tenants. The Parties therefore propose the following Joint Protective Order to apply to this
7 matter going forward.

8 **JOINT PROTECTIVE ORDER**

9 1. This Order shall apply to all documents, information and other products of
10 discovery (including testimony, exhibits and transcripts of testimony taken at deposition)
11 obtained by any party to this proceeding pursuant to discovery requests, whether directed to
12 another party or to a person or entity not a party to this proceeding.

13 2. Either party, in producing or filing a document or other materials in this
14 proceeding, may obtain confidential treatment for the information contained therein pursuant to
15 this Order by typing, stamping or electronically affixing on the front of that document, or on the
16 portion(s) of the document for which confidential treatment is desired, one of the terms
17 "ATTORNEYS EYES ONLY"; "HIGHLY CONFIDENTIAL/ATTORNEYS EYES ONLY";
18 "HIGHLY CONFID/ATTYS EYES ONLY" or the term "HIGHLY CONFIDENTIAL."

19 3. The "HIGHLY CONFIDENTIAL" designation shall be used only to identify
20 financial, business, or commercial information that is not publicly available.

21 4. The "ATTORNEYS EYES ONLY," "HIGHLY
22 CONFIDENTIAL/ATTORNEYS EYES ONLY," or "HIGHLY CONFID/ATTYS EYES
23 ONLY" designations shall be used only to identify financial, business, or commercial
24 information that is not publicly available and which is highly sensitive and could cause
25 competitive harm to the disclosing party or to a third party if disclosed to employees of the
26 receiving party. Likewise, the term "ATTORNEYS EYES ONLY" shall include documents and
27 information designated with the terms "HIGHLY CONFIDENTIAL/ATTORNEYS EYES
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1 ONLY"; or "HIGHLY CONFID/ATTYS EYES ONLY." Documents so designated shall be
2 treated in the same manner, as set forth herein, as documents and information designated as
3 "ATTORNEYS EYES ONLY."

4 5. Any document filed under seal prior to the entry of this Order shall, from and
5 after the effective date of this Order, be treated as "HIGHLY CONFIDENTIAL."

6 6. When used in this Order, the word "document" means all written, recorded,
7 electronic or graphic matter whatsoever and copies thereof (whether identical or not), including,
8 but not limited to, pleadings, motions, briefs, responses to discovery (including produced
9 documents), transcripts of testimony, all records or information compilations made or
10 maintained by electronic, photographic or mechanical means.

11 7. Any entity or person giving testimony (by deposition or otherwise) in this
12 proceeding, whether through its officers, employees, directors or otherwise, may obtain
13 confidential treatment therefor pursuant to this Order by the deponent or counsel advising the
14 reporter during the course of that testimony as to those portions of the testimony for which
15 confidential treatment is desired. The reporter shall separately transcribe and bind those
16 portions of the testimony so designated as confidential and shall mark the face of the separately
17 bound transcript of such confidential testimony with the words "ATTORNEYS EYES ONLY"
18 or "HIGHLY CONFIDENTIAL."

19 8. Whenever any documents or transcripts afforded confidential treatment pursuant
20 to this Order are introduced as exhibits, or otherwise utilized, in connection with deposition
21 testimony given in this action, counsel introducing such exhibits, or using such information in
22 the examination of a witness, shall advise the reporter that the portions of the testimony which
23 refer thereto and the exhibits themselves shall be afforded confidential treatment pursuant to this
24 Order. The reporter shall separately transcribe those portions of the testimony so designated,
25 bind therewith the confidential exhibits to which the testimony refers, and mark the face of the
26 separately bound transcript with the words "ATTORNEYS EYES ONLY" or "HIGHLY
27 CONFIDENTIAL."

1 9. To the extent that any motions, briefs, pleadings or other papers to be filed with
2 the Court in connection with this proceeding incorporate documents, transcripts or information
3 subject to this Order, the party seeking to file such papers shall designate such materials or
4 portions thereof as "ATTORNEYS EYES ONLY" or "HIGHLY CONFIDENTIAL" and shall
5 seek an order pursuant to N.D. Cal. Civil L.R. 79-5, allowing the party to file the same under
6 seal; provided, however, that a copy of such filing having the confidential information deleted
7 therefrom may be made part of any public record of this proceeding .

8 10. Any document or transcript designated as "ATTORNEYS EYES ONLY" or
9 "HIGHLY CONFIDENTIAL" shall be held by either party's outside counsel under the terms of
10 this Order and may not be provided to the assigned Judge or to the Court, in the absence of an
11 order filing the document under seal, until the time of any motion, testimony, hearing or trial of
12 this action. Counsel shall take appropriate steps to ensure that all documents or information in
13 their possession marked as "ATTORNEYS EYES ONLY" and "HIGHLY CONFIDENTIAL",
14 and all references thereto, do not lose any confidentiality.

15 11. If a party or person inadvertently fails to designate discovery or other material as
16 "ATTORNEYS EYES ONLY" or "HIGHLY CONFIDENTIAL" in a timely fashion as
17 provided herein, it may make such a designation subsequently by notifying the parties in
18 writing. After receipt of such designation, such documents, materials and information shall be
19 treated as if they had been designated in a timely fashion.

20 12. All documents or other materials designated as "ATTORNEYS EYES ONLY"
21 or "HIGHLY CONFIDENTIAL" under this Order and provided by one party to the other party
22 or other person in accordance with this Order shall remain in the sole control and custody of the
23 receiving party's counsel, except with the prior written consent of the producing party, or the
24 prior Order of the Court and except as provided below in paragraphs 13 and 14.

25 13. Any information contained in, or derived from, any document or transcript
26 marked or designated "ATTORNEYS EYES ONLY" may not be disclosed to any person,
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1 except that information and documents marked "ATTORNEYS EYES ONLY" may be
2 disclosed to the following persons:

3 (a) The Judge assigned to this proceeding, or if appropriate, the Court or any
4 court with appellate jurisdiction over this proceeding.

5 (b) Only the following persons and firms:

6 1. Counsel of record for each party to this proceeding, the law firm of
7 Fitzgerald Abbott & Beardsley LLP, Michele Heffes, Esquire, Acting Port
8 Attorney and if applicable, her successor as Port Attorney, and Donnell Choy,
9 Esquire, Deputy Port Attorney, in-house counsel for the Port of Oakland, but no
10 others at the Port of Oakland or other in-house counsel, and the law firm of
11 Russell, Mirkovich & Morrow for Defendants, and including partners, associates,
12 clerks, paralegals, secretaries or other employees of the firms assisting such
13 counsel in this proceeding.

14 2. Outside counsel of record in the related case before the Federal
15 Maritime Commission ("FMC"), Saul Ewing LLP for Plaintiff and Cozen
16 O'Connor for Defendants and including partners, associates, clerks, paralegals,
17 secretaries or other employees of the firms assisting such counsel in this
18 proceeding.

19 (c) Except as provided in 13(b), this list of permitted disclosure for
20 "ATTORNEY'S EYES ONLY," "HIGHLY CONFIDENTIAL/ATTORNEYS EYES ONLY,"
21 or "HIGHLY CONFID/ATTYS EYES ONLY" does not include in-house counsel for a party or
22 any party's outside counsel.

23 (d) Accountants, economists, analysts or other independent experts retained
24 by either party to this proceeding as advisors, consultants or expert witnesses ("collectively
25 "Independent Experts") who are preparing an expert report, preparing for or assisting in
26 preparation for a deposition or other discovery, testimony, motion, hearing, trial or appeal or
27 other proceeding in this matter or the case before the FMC; provided, however that any such
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1 expert must have been retained by the party for purposes of assisting with this litigation or the
2 case before the FMC in consultation with the attorneys identified in paragraph 13(b) above, and
3 each expert must confirm that he (i) does not advise the party he is assisting on submitting bids
4 to carrier customers or in negotiating lease terms at other ports, and (ii) is not presently doing
5 any other unrelated work for the party he is assisting, in the Port of Oakland. No such
6 designated document or any duplication, summary, or excerpt of a document that has been
7 designated as "ATTORNEYS EYES ONLY" under this Order shall be given to an Independent
8 Expert except upon execution of an agreement to be bound by this Protective Order and not to
9 disclose the document(s) further in the form appended as Exhibit A. Counsel obtaining all such
10 signed agreements shall be obligated to hold and maintain them. This Paragraph shall not
11 constitute an obligation to disclose expert information beyond the obligations imposed by the
12 rules applicable to this proceeding.

13 (e) Any person who authored and/or was an identified original recipient of
14 the particular "ATTORNEYS EYES ONLY" material sought to be disclosed to that person.

15 (f) Any deponent (during the course of a deposition or other testimony in the
16 litigation but not to prepare the witness's testimony) when the examining attorney has a good
17 faith basis to believe the deponent is aware of the particular material sought to be disclosed.

18 (g) The Court Reporter employed to record depositions.

19 (h) During the course of depositions or other testimony in the litigation, and
20 upon mutual agreement of the parties, a party representative may remain present during the
21 testimony of "ATTORNEYS EYES ONLY" material, but may not be shown such material, may
22 not take notes concerning such material, and may not thereafter discuss such material.

23 14. Any information contained in, or derived from, any document or transcript
24 marked or designated "HIGHLY CONFIDENTIAL" may not be disclosed to any person, except
25 that information and documents marked "HIGHLY CONFIDENTIAL" may be disclosed to the
26 following persons:

1 (a) The Judge assigned to this proceeding, or if appropriate, this Court or any
2 appropriate appellate court;

3 (b) Counsel of record for either party to this proceeding including associates,
4 clerks, paralegals, secretaries or other employees of such counsel assisting in this proceeding;

5 (c) Outside counsel of record in the related case before the Federal Maritime
6 Commission, Saul Ewing LLP for Plaintiff and Cozen O'Connor for Defendants and including
7 partners, associates, clerks, paralegals, secretaries or other employees of the firms assisting such
8 counsel in this proceeding.

9 (d) Independent Experts who are preparing an expert report, preparing for or
10 assisting in preparation for a deposition or other discovery, testimony, motion, hearing, trial or
11 appeal or other proceeding in this matter; however no such designated document or any
12 duplication, summary, or excerpt of a document that has been designated as "HIGHLY
13 CONFIDENTIAL" under this Order shall be given to an Independent Expert except upon
14 execution of the agreement referred to in paragraph 13(d);

15 (e) Either party's in-house counsel, and

16 (f) The following persons designated by counsel: in the case of SSAT, Ed
17 DeNike, Jon Hemingway, Jon Rosselle, Charles Sadoski, Bill Hirai, Mark Knudsen, Sandi Lira,
18 and Kevin Mehlberg, and in the case of the Port, Jean Banker, James Kwon, Cornel Hammons,
19 Chris Peterson, Mark Erickson, Omar Benjamin, Lawrence Dunnigan, and Sara Lee.

20 15. Counsel obtaining all such signed agreements pursuant to paragraphs 13(d) and
21 14(c) shall be obligated to hold and maintain them. Paragraphs 13(c) and 14(c) shall not
22 constitute an obligation to disclose expert information beyond the obligations imposed by the
23 rules applicable to this proceeding.

24 16. The Parties may add to the persons designated in paragraphs 13(b) and 14 by
25 mutual agreement, or, failing agreement, by filing a motion with the Court to allow such
26 addition. Each Party must have good cause to object to the addition of additional persons who
27 may have access to "HIGHLY CONFIDENTIAL" information. Notwithstanding the
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1 foregoing, each party will endeavor to keep the persons entitled to review "HIGHLY
2 CONFIDENTIAL" information to a minimum.

3 17. ALL PERSONS TO WHOM "ATTORNEYS EYES ONLY" or "HIGHLY
4 CONFIDENTIAL" information and / or documents are disclosed will not use same for any
5 business, commercial or competitive purposes or for any purpose whatsoever other than the
6 preparation for and conducting of any deposition or other discovery, testimony, motion, hearing,
7 trial or appeal or other proceeding in this action or in the FMC action in accordance with the
8 provisions of this Order. No person receiving or reviewing such confidential documents,
9 information or transcript shall disclose it or its contents to any person other than those described
10 in paragraphs 13 and 14 and for the purposes specified, and in no event shall such person make
11 any other use of such document or transcript to defeat this Confidentiality Order.

12 18. Storage, transmission or communication of "ATTORNEYS EYES ONLY"
13 information and "HIGHLY CONFIDENTIAL" information must be such as to reasonably
14 ensure that the "ATTORNEYS EYES ONLY" information and "HIGHLY CONFIDENTIAL"
15 information will not be disclosed, accidentally or otherwise, to non authorized persons.

16 19. Any person to whom disclosure is made pursuant to Paragraph 13 or 14 of this
17 Order, including the paralegal, secretarial or other personnel of a party's counsel regularly
18 employed thereby and assisting in the preparation for hearing or trial of this action, shall be
19 advised concerning the terms of this Order and shall be given a copy of this Order.

20 20. If any party to this proceeding objects to the designation of documents,
21 transcripts or other information as "ATTORNEYS EYES ONLY" or "HIGHLY
22 CONFIDENTIAL" pursuant to this Order, it may apply to the Court by motion for a ruling that
23 the document, transcript or other materials shall not be so treated. Until the Court enters an
24 order, if any, changing the designation of the document or transcript, it shall be afforded the
25 confidential treatment provided for in this Order.

26 21. Within sixty (60) days after the final termination of this litigation or the FMC
27 case, whichever is later, (including any appellate review), all documents, transcripts or other
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1 materials in the receiving party's possession that have been afforded "ATTORNEYS EYES
2 ONLY" or "HIGHLY CONFIDENTIAL" treatment pursuant to this Order, including any
3 duplicates, extracts, summaries or compilations taken therefrom, shall be destroyed; provided,
4 however that copies of confidential materials that have been produced in pleadings or exhibits
5 may be retained subject to the continued applicability of this Order, and provided further, that in
6 the case of electronically stored documents which contain "ATTORNEYS EYES ONLY" or
7 "HIGHLY CONFIDENTIAL" information that cannot be deleted due to a party's
8 documentation retention policy ("Policy"), such materials shall not be further accessed by the
9 receiving party without the prior written consent of the producing party and will be destroyed
10 by the receiving party when permitted by the Policy. The provisions of this Order that restrict
11 the handling, communication and use of "ATTORNEYS EYES ONLY" information and
12 "HIGHLY CONFIDENTIAL" information shall continue to be binding after the termination of
13 this proceeding and the FMC proceeding, including any related court litigation or judicial
14 appeals, unless the producing party/person authorizes in writing alternative handling,
15 communication or use of the information.

16 22. This Order is without prejudice to a Confidentiality Agreement Pursuant to the
17 Federal Rules of Evidence and the California Evidence Code entered into on July 29, 2009 by
18 the parties to this litigation (the "FMC Confidentiality Agreement") in a related proceeding
19 which is pending before the Federal Maritime Commission. That FMC Confidentiality
20 Agreement is and shall remain in force throughout the duration of these proceedings, except that
21 the parties agree that the persons identified herein in paragraph 13(b) identifying ATTORNEYS
22 EYES ONLY recipients and paragraph 14 concerning HIGHLY CONFIDENTIAL recipients
23 shall be authorized recipients of the same information in the same categories as set forth in the
24 July 29, 2009 FMC Confidentiality Agreement and the Amended FMC Joint Protective Order
25 served on December 20, 2010, unless either party seeks a further modification of that FMC
26 Confidentiality Agreement or the Amended FMC Joint Protective Order .

27 23. Either party may undertake to obtain further agreements, orders or procedures as
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1 are necessary to preserve the confidentiality asserted for trial or any public hearing or
2 proceeding in this matter.

3 24. Nothing contained herein shall affect or restrict the rights of any party with
4 respect to its own documents or to information obtained or developed independently of
5 documents and transcripts afforded confidential treatment pursuant to this Order.

6 25. If "ATTORNEYS EYES ONLY" or "HIGHLY CONFIDENTIAL" information
7 in the possession of any party is subpoenaed by any court, administrative or legislative body, or
8 any other person purporting to have authority to subpoena such information, the party to whom
9 the subpoena is directed will not produce such information without first giving written notice
10 (including the delivery of a copy thereof) to the producing party/person or the attorneys for the
11 producing party/person, within 24 hours after receipt of the subpoena. If a subpoena purports to
12 require production of such "ATTORNEYS EYES ONLY" information or "HIGHLY
13 CONFIDENTIAL" information on less than four (4) business days' notice, the party to whom
14 the subpoena is directed shall also give immediate notice by telephone of the receipt of such
15 subpoena. To the extent permitted by applicable law, the Port will endeavor in good faith to
16 prevent or limit the disclosure, to third parties, of "ATTORNEYS EYES ONLY" and
17 "HIGHLY CONFIDENTIAL" information submitted by SSAT, being compelled, by seeking a
18 protective order or other appropriate remedy. In the event that the Port is unable to prevent
19 disclosure from being compelled, the Port shall furnish only that portion of the "ATTORNEYS
20 EYES ONLY" OR "HIGHLY CONFIDENTIAL" information that is required to be disclosed
21 and shall exercise best efforts to obtain reasonable assurances that confidential treatment will be
22 accorded to the information disclosed.

23 26. (a) All documents marked "ATTORNEYS EYES ONLY" or "HIGHLY
24 CONFIDENTIAL" by SSAT are considered by SSAT to contain trade secrets of SSAT and/or
25 of its related entities and are being provided to the Port upon the condition that it accept that
26 characterization, unless otherwise determined by a court with competent jurisdiction, and that
27 these documents shall not be subject to disclosure following a request under the California
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1 Public Records Act, California Government Code Sec. 6250 et seq. and/or Article 2.20.180 et
2 seq. of the City of Oakland Code of Ordinances and any successor acts or ordinances thereto
3 except as provided below.

4 (b) If the Port receives a Public Records Act request calling for disclosure of
5 documents designated "ATTORNEYS EYES ONLY" or "HIGHLY CONFIDENTIAL" by
6 SSAT, the Port will: (1) advise SSAT of the records request, and (2) advise the party making the
7 Public Records Act request ("Requesting Party") that the documents have been designated as
8 trade secrets by the party providing them to the Port and will not be released to the Requesting
9 Party because of that designation. The Port will also inform the Requesting Party that if it
10 disputes that designation, it has the option of challenging that designation in a court of law.

11 (c) If the Requesting Party files a court action to compel disclosure, the Port
12 will promptly notify SSAT of that filing. Thereafter, SSAT shall have ten (10) business days,
13 after the Port's delivery of written notification, to inform the Port, in writing, that it will defend
14 any litigation regarding whether the records at issue qualify as confidential or trade secrets. If
15 SSAT fails to provide such notification within the prescribed time, or fails to defend the
16 litigation (and provide adequate and ongoing assurances to the Port of such defense), the Port
17 may independently determine, in its sole discretion, whether any document (or portion thereof)
18 is subject to disclosure. If the Port determines that such records are not confidential or trade
19 secrets, the Port may disclose such records to the Requesting Party without liability to SSAT. In
20 addition, SSAT will indemnify, defend and hold harmless the Port from any claim based on the
21 Port's reliance on SSAT's designation of the documents as trade secrets.

22 27. This Order is without prejudice to the right of any party to seek modification or
23 amendment of this Order by order of this Court.

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28. This Order shall be effective on the date served.

Dated: June 7, 2012

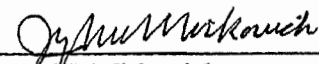
FITZGERALD ABBOTT & BEARDSLEY LLP

By 

Richard T. White
Attorneys for Port of Oakland

Dated: June 7, 2012


RUSSELL, MIRKOVICH & MORROW

By 

Joseph N. Mirkovich
Attorneys for Defendants and Counterclaimants
SSA Terminals, LLC and SSA Terminals
(Oakland), LLC

IT IS SO ORDERED

Dated: June 18, 2012


Maria-Elena James
Chief United States Magistrate Judge

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PROOF OF SERVICE - F.R.C.P. §5

I, the undersigned, declare: I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action. I am employed by Fitzgerald Abbot & Beardsley LLP, located at 1221 Broadway, 21st Floor, Oakland, CA 94612.

On June 7, 2012, I served a true and correct copy of the following document(s):

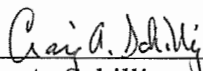
JOINT PROTECTIVE ORDER

on the following interested parties, by causing service by the method indicated below:

Joseph N. Mirkovich, Esq. Russell, Mirkovich & Morrow One World Trade Center, Suite 1280 Long Beach, CA 90831-1280 Telephone: (562) 436-9911 Facsimile: (562) 436-1287 E-Mail: JMirkovich@rumlaw.com <i>Attorneys for SSA Terminals, LLC and SSA Terminals (Oakland), LLC</i>	
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<input checked="" type="checkbox"/>	U.S. Mail - By placing a copy of said document(s) in a sealed envelope addressed as stated above, with postage thereon fully prepaid, and depositing said envelope today with the U.S. Postal Service, following this firm's business practices.
	Overnight Delivery - By placing a copy of said document(s) in a sealed pre-paid overnight envelope or package and depositing said envelope or package today in a box or other facility regularly maintained by the express service carrier, following this firm's business practices.
	Personal Service - By providing a service copy to Rapid Legal whose employee will personally deliver said documents(s) in an envelope or package clearly labeled to identify the attorney/party located at the office(s) of the addressee(s) stated above.
	Facsimile - By placing a true copy thereof into a facsimile machine to the fax number stated above, as agreed upon, in writing, by the parties.
	Email - By placing a true copy thereof into .pdf format and forwarding via email.

I declare under the penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed on June 7, 2012 at Oakland, California.



Craig A. Schillig