

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JEROLD WILLIAMS,

13 Civ. 1860 (MKB)(MDG)

Plaintiff,

-against-

**[PROPOSED] STIPULATED  
CONFIDENTIALITY  
AGREEMENT**

FRANK MARTZ COACH COMPANY, FH  
FAMILY LP, PATRICK GRAHAM and LIANG  
TIAN,

Defendants.  
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**WHEREAS**, Plaintiff Jerold Williams (“Plaintiff”), Defendant Frank Martz Coach Company (“Martz”) and Defendant Liang Tian (“Tian”) having requested discovery of certain materials, documents and information; and

**WHEREAS**, a party or parties contend that certain items, in whole or part, are confidential and/or proprietary business property;

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned attorneys for the parties hereto as follows:

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure may be warranted. The parties acknowledge that this Stipulation does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled, under applicable legal principles, to treatment as confidential.

2. **CONFIDENTIAL INFORMATION**

“Confidential Information” shall mean Social Security or Taxpayer Identification Numbers; dates of birth; names of minor children; financial account numbers; home addresses; sensitive information involving personal financial, medical, matrimonial, or family matters; or trade secrets and other confidential research, development, or commercial information (regardless of how generated, stored or maintained) that would significantly undercut a legitimate competitive advantage of the Designating party (defined below) if disclosed.

“Confidential Information” does not include information that:

- a. is in the public domain at the time of disclosure;
- b. becomes part of the public domain through no fault of the Receiving Party (defined below);
- c. the Receiving party can show was in its rightful and lawful possession at the time of disclosure; or
- d. the Receiving Party lawfully receives at a later date from a third party without restriction as to disclosure.

Parties and non-parties may designate any Confidential Information supplied in any form, or any portion thereof, as protected Material (defined below) for purposes of these proceedings. Such designation shall constitute a representation to the Court that counsel believes in good faith that the information (1) constitutes Confidential Information; and (2) that there is good cause for the Confidential Information to be protected from public disclosure. The parties and non-parties shall make a good faith effort to designate information so as to provide the greatest level of disclosure possible, but still preserve confidentiality as appropriate.

3. **ADDITIONAL DEFINITIONS**

3.1 **Party**: any party to this action, including all of its officers, directors, consultants, retained experts and outside counsel (and their support staff), or any party in any related action pending in any Court which arises out of the Martz Bus accident of March 6, 2013.

3.2 **Non-Party**: any individual, corporation, association, or other natural person or entity other than a party.

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

3.4 **Protected Material**: any Disclosure or Discovery Material that is designated by a Party or Non-Party as “confidential” according to paragraphs 1 and 5, unless the Receiving party challenges the confidentiality designation and (1) the Court decides such material is not entitled to protection as confidential; (2) the Designating Party fails to apply to the Court for an order designating the material confidential within the time period specified below; or (3) the Designating party withdraws its confidentiality designation in writing.

3.5 **Receiving Party**: a Party that receives Disclosure or Discovery Material from a Producing Party.

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

3.7 **Designating Party**: a Party or Non-Party that designates information or items that it produces in disclosures or in response to discovery as Protected Material. The Party or Non-Party

designating information or items as Protected Material bears the burden of establishing good cause for confidentiality of all such information or items.

3.8 Challenging Party: a Party that elects to initiate a challenge to a Designating Party's confidentiality designation.

3.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

3.10 House Counsel: attorneys who are employees of a Party.

3.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs.

3.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its/his/her counsel to serve as an expert witness or as a consultant in this action and who is not: (1) a past or current employee of a Party; (2) a past or current employee of a competitor of a Party; or (3) at the time of retention, anticipated to become an employee of a Party or a competitor of a party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

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

#### 4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Stipulation shall remain in effect until a Designating party agrees otherwise in writing or a Court

order otherwise directs.

**5. DESIGNATING PROTECTED MATERIAL**

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Stipulation shall use good faith efforts to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party shall use good faith efforts to designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Stipulation.

Mass, indiscriminate, or routine designations are strictly prohibited. Designations that are shown to be clearly unjustified, or that have been made for improper purposes (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), may subject the Designating party to sanctions upon appropriate motion to the Court.

If it comes to a Party's or a Non-Party's attention that information or items that it designated for protection do not qualify for protection, that Party or Non-Party shall promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designation. Except as otherwise provided in this Stipulation (see, e.g., second paragraph of Section 6.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Stipulation shall be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Stipulation requires:

a. For Information in Documentary Form (apart from transcripts of depositions or other pretrial or trial proceedings), the Producing Party shall affix the legend “CONFIDENTIAL” at the bottom of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also shall clearly identify the protected portion(s) e.g., by making appropriate markings in the margins, but not over text).

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed confidential. After the inspecting Party has identified the documents it wants copied and produced, the Producing party shall determine which documents, or portions thereof, qualify for protection under this Stipulation, then, before producing the specified documents, the Producing Party must affix the legend “CONFIDENTIAL” at the bottom of each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also shall clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins, but not over text).

b. For Testimony Given in Deposition or in Other Pretrial or Trial Proceedings, the Party or Non-Party offering or sponsoring the testimony must identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony. When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or Non-Party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition

or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulation.

Transcript pages containing Protected material must be separately bound by the court reporter, who must affix to the bottom of each page the legend "CONFIDENTIAL", as instructed by the Party or Non-Party offering or sponsoring the witness or presenting the testimony. If only a portion of the material on a page qualifies for protection, the Producing Party also shall clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins, but not over text).

c. For Information Produced in Some Form Other Than Documentary and For Any Other Tangible Items, the Producing Party must affix in a prominent place on the exterior of the container or containers in which the information or items is stored the legend "CONFIDENTIAL. If only a portion of the information or item warrants protection, the Producing Party, to the extent practicable, shall also identify the protected portions in such a way that does not interfere with the viewing of the evidence.

5.3 Inadvertent Failure to Designate. If timely corrected, an inadvertent failure to designate qualified information or items "Confidential" does not, standing alone, waive the Designating party's right to secure protection under this Stipulation for such material. If material is appropriately designated as "confidential" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Stipulation.

5.4 Inadvertent Production of Privileged Information. If a Party, through inadvertence, produces or provides material that it believes is subject to a claim of attorney-client privilege, work product immunity, or any other privilege or immunity, the Producing Party may give written notice to the Receiving Party that the material is subject to a specific privilege or immunity and request that the material be returned to the Producing party. The Receiving Party shall return the material. Return of the material shall not constitute an admission or concession or permit any inference that the returned material is, in fact, properly subject to any claim of any privilege or immunity, nor shall it foreclose any Party from moving the Court for an order that such document or thing has been improperly designated or should be producible for any reason, including a waiver caused by the inadvertent production.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

6.2 Meet and Confer: A party that elects to initiate a challenge to a Designating Party's confidentiality designation shall do so in good faith and must begin the process by conferring directly with counsel for the Designating party. In conferring, the Challenging party shall explain the basis for its belief that the confidentiality designation was not proper and must give the Designating party ten (10) days to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A



Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Formal Challenge to Designation. If, after engaging in the meet and confer process, a Challenging Party still contends that a confidentiality designation was not proper, the Challenging Party may at any time give written notice by way of a letter to the Designating party stating its objection to the confidentiality designation. The Designating Party has fourteen (14) days from receipt of such written notice to apply to the Court for an order specifically designating the Disclosure or Discovery Material at issue as confidential. The Party seeking such an order has the burden of establishing good cause for the Disclosure or Discovery Material to be treated as confidential.

6.4 Treatment of Information While Challenge is Pending. Notwithstanding any challenge to the designation of Disclosure or Discovery Material as confidential, all materials designated as such shall be treated as such and subject to this Stipulation until one of the following occurs:

- a. the Designating Party withdraws its confidentiality designation in writing;
- b. the Designating Party fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or
- c. the Court decides the material at issue is not subject to protection as confidential.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use the Protected Material that is

disclosed or produced by another Party or a Non-Party in connection with this case or any related case arising out of the same accident, for prosecuting, defending, or attempting to settle this litigation. Such Protected material may be disclosed only to the categories of persons and under the conditions as are described herein. When the litigation has been terminated, a Receiving Party shall comply with the provisions of Paragraph 11, below (FINAL DISPOSITION).

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

7.2 Disclosure of Protected Material. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

- a. Outside Counsel of record for any Party in this action or any related action arising out of the same accident, including associated personnel necessary to assist Outside counsel in these proceedings, such as litigation assistants, paralegals, and secretarial and other clerical personnel;
- b. Parties to this litigation or any related litigation arising out of the same accident, and their officers, directors, and employees (including House Counsel) to whom disclosure is reasonably necessary for this litigation;
- c. Experts (as defined in this Stipulation) of th Receiving Party, including associated personnel necessary to assist experts in these proceedings, such as litigation assistants, paralegals, and secretarial and other clerical personnel, so long as such Expert has signed the "Acknowledgment and Agreement to Be Bound by this Stipulated Confidentiality Agreement

(Exhibit A);

d. the Court, including associated personnel necessary to assist the Court in its functions, and the jury;

e. litigation support services, including outside copying services, court reporters, stenographers, videographers, or companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, retained by a Party or its counsel for the purpose of assisting the Party in these proceedings, for whom a company representative has signed the "Acknowledgment and Agreement to Be Bound by this Stipulated Confidentiality Agreement (Exhibit A);

f. other professional vendors to whom disclosure is reasonably necessary for this litigation and for whom a company representative has signed the "Acknowledgment and Agreement to Be Bound by this Stipulated Confidentiality Agreement (Exhibit A);

g. any actual or potential witness in the action who has signed the "Acknowledgment and Agreement to Be Bound by this Stipulated Confidentiality Agreement (Exhibit A), provided that counsel believes, in good faith, that such disclosure is reasonably necessary for the prosecution or defense of this proceeding. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted herein;

h. the author of the document or the original source of the information;

I. Counsel for issues of insurance policies under which any insurer may be liable to satisfy part or all of a judgment that may be entered in this proceeding or to indemnify

or reimburse payments or costs associated with this proceeding and who has signed the “Acknowledgment and Agreement to Be Bound by this Stipulated Confidentiality Agreement (Exhibit A);

j. any mediator or arbitrator appointed by the Court or selected by mutual agreement of the Parties and the mediator or arbitrator’s secretarial and clerical personnel, provided that a company representative for the mediator or arbitrator has signed the “Acknowledgment and Agreement to Be Bound by this Stipulated Confidentiality Agreement (Exhibit A);

k. Counsel representing clients with present or future cases against the same defendants arising out of the same or similar sets of facts, transactions, or occurrences, provided that before disclosing any Protected Material to any such counsel, the Receiving party must notify the Designating party ten (10) days before disclosing such material in order to give the Designating party an opportunity to move for a protective order preventing or limiting such disclosure; and

l. any other person as to whom the producing party has consented to disclosure in advance and in writing, on notice to each Party hereto.

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

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL”, the Receiving party shall so notify the Designating party, in writing (by e-mail or fax, if possible) within three (3) days after receiving the subpoena or order. Such notification must include a copy of the

subpoena or court order.

The Receiving Party also shall immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Confidentiality Agreement. In addition, the Receiving party shall deliver a copy of the Stipulated Confidentiality Agreement promptly to the party in the other action that caused the subpoena or order to issue.

**9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving party learns that, by inadvertence or otherwise, it has disclosed Protected material to any person or in any circumstance not authorized under this Stipulation, the Receiving Party shall immediately (1) notify in writing the Designating party of the unauthorized disclosures; (2) use its best efforts to retrieve all copies of the Protected Material; (3) inform the person or persons to whom unauthorized disclosures were made of all of the terms of this Stipulation; and (4) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound by this Stipulated Confidentiality Agreement” that is attached hereto as Exhibit A.

**10. PROTECTED MATERIAL IN COURT**

This Stipulation does not seal Court records in this case or apply to the disclosure of protected Material at trial. It is only intended to facilitate the prompt production of Discovery Materials. A Party that seeks to file under seal any Protected material, seal the Court record, or close trial proceedings must comply with applicable law. The fact that Discovery Material has been designated as “CONFIDENTIAL” shall not be admissible as evidence that the Material in fact contains confidential information entitled to protection from disclosure under the law.

**11. FINAL DISPOSITION**

Unless otherwise ordered or agreed in writing by the Producing party, and if requested by the Producing Party, each Receiving Party shall return all Protected Material to the Producing Party after the final termination of this action. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Stipulation as set forth in Paragraph 4 (DURATION), above.

**12. MISCELLANEOUS**

12.1 Public Health and Safety. Nothing in this Stipulation is intended to prevent any party from raising with the Court any concern that the non-disclosure of certain Protected Material may have a possible adverse effect upon the general public health or safety, or the administration or operation of government or public office.

12.2 Right to Further Relief. Nothing in this Stipulation abridges the right of any person to seek its modification by the Court in the future.

12.3 Right to Assert Other Objections. By stipulating to this Stipulated Confidentiality Agreement, no Party waives any right it would otherwise have to object to disclosing or producing any information or item on any ground not addressed in this Stipulation. Similarly, no Party waives any right to object on any ground the use in evidence of any material covered by this Stipulation.

Dated: September , 2013

Kahn Gordon Timko & Rodriques, P.C.

Rawle & Henderson LLP

By: \_\_\_\_\_

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EXHIBIT A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JEROLD WILLIAMS,

13 Civ. 1860 (MKB)(MDG)

Plaintiff,

-against-

**ACKNOWLEDGMENT AND  
AGREEMENT TO BE BOUND BY  
STIPULATED CONFIDENTIALITY  
AGREEMENT**

FRANK MARTZ COACH COMPANY, FH  
FAMILY LP, PATRICK GRAHAM and LIANG  
TIAN,

Defendants.

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I acknowledge that I have read and understand the Stipulated Confidentiality Agreement entered in this action on \_\_\_\_\_, 2013, and agree to abide by its terms and conditions. Because it is necessary for me in the performance of my duties to have access to Protected Material and information contained therein that are the subject of said Stipulated Confidentiality Agreement, I understand and agree that I am personally bound by and subject to all of the terms and provisions thereof.

Witness my signature this \_\_\_\_ day of \_\_\_\_\_, 201 .

\_\_\_\_\_  
Signature

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_