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3 Including Professional Corporations
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12 Swift Transportation Co. of Arizona, LLC
13 (erroneously sued herein as "Swift Transportation
14 Company, Inc.")

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

17 DAN FROST,
18 Plaintiff,
19 v.
20 SWIFT TRANSPORTATION COMPANY,
21 INC.; and, DOES 1-10, inclusive,
22 Defendants.

Case No. 2:17-CV-01864-TLN-GGH
**STIPULATION FOR PRIVATE
PROTECTIVE ORDER**

Judge: Hon. Troy L. Nunley
Courtroom: 2

1 **IT IS HEREBY STIPULATED**, pursuant to Federal Rule of Civil Procedure 26 and Local
2 Rule 143, by and between the parties to the above-captioned action, Plaintiff Dan Frost (“Plaintiff”
3 or “Frost”) and Defendant Swift Transportation Co. of Arizona, LLC (“Defendant” or “Swift”)
4 (collectively, the “Parties”), by and through their respective counsel of record, that in order to
5 facilitate the exchange of information and documents which may be subject to confidentiality
6 limitations on disclosure due to federal laws, state laws, and privacy rights, the parties stipulate as
7 follows:

8 1. **Scope.** All materials produced or adduced in the course of discovery, including
9 initial disclosures, responses to discovery requests, deposition testimony and exhibits, and
10 information derived directly therefrom (hereinafter collectively “documents”), shall be subject to
11 this Order concerning Confidential Information as defined below. This Order is subject to the
12 Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and
13 calculation of time periods.

14 2. **Confidential Information.** As used in this Order, “Confidential Information”
15 means information designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” by
16 the producing party that falls within one or more of the following categories: (a) information
17 prohibited from disclosure by statute; (b) information that reveals trade secrets; (c) research,
18 technical, commercial or financial information that the party has maintained as confidential; (d)
19 medical information concerning any individual; (e) personal identity information; (f) income tax
20 returns (including attached schedules and forms), W-2 forms and 1099 forms; (g) personnel or
21 employment records of a person who is not a party to the case; or (h) any other information or
22 documentation that the law otherwise protects from disclosure to the public. Information or
23 documents that are available to the public may not be designated as Confidential Information.

24 3. **Designation.**

25 (a) A party may designate a document as Confidential Information for
26 protection under this Order by placing or affixing the words “CONFIDENTIAL - SUBJECT TO
27 PROTECTIVE ORDER” on the document and on all copies in a manner that will not interfere
28 with the legibility of the document. As used in this Order, “copies” includes electronic images,

1 duplicates, extracts, summaries or descriptions that contain the Confidential Information. The
2 marking “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” shall be applied prior to or
3 at the time the documents are produced or disclosed. Applying the marking “CONFIDENTIAL -
4 SUBJECT TO PROTECTIVE ORDER” to a document does not mean that the document has any
5 status or protection by statute or otherwise except to the extent and for the purposes of this Order.
6 Any copies that are made of any documents marked “CONFIDENTIAL - SUBJECT TO
7 PROTECTIVE ORDER” shall also be so marked, except that indices, electronic databases or lists
8 of documents that do not contain substantial portions or images of the text of marked documents
9 and do not otherwise disclose the substance of the Confidential Information are not required to be
10 marked.

11 (b) The designation of a document as Confidential Information is a certification
12 by an attorney that the document contains Confidential Information as defined in this order.

13 **4. Depositions.**

14 For testimony given in deposition or in other pretrial or trial proceedings, designation as
15 Confidential Information requires that the Party or non-party offering or sponsoring the testimony
16 identify on the record, before the close of the deposition, hearing, or other proceeding, all
17 protected testimony, and further specify any portions of the testimony that qualify as “HIGHLY
18 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately
19 each portion of testimony that is entitled to protection, and when it appears that substantial
20 portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers,
21 or gives the testimony may have up to 21 days from receipt of the full transcript (i.e. excluding
22 rough transcripts) to identify the specific portions of the testimony as to which protection is sought
23 and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL—ATTORNEYS’ EYES ONLY”) in a Notice of Designation. Only those
25 portions of the testimony that are appropriately designated for protection within the 21 days shall
26 be covered by the provisions of this Stipulated Protective Order.

27 **5. Protection of Confidential Material.**

1 (a) **General Protections.** Confidential Information shall not be used or
2 disclosed by the parties, counsel for the parties or any other persons identified in subparagraph (b)
3 for any purpose whatsoever other than in this litigation, including any appeal thereof. For the
4 avoidance of doubt, absent consent from the party that designated information Confidential under
5 this Order, Confidential Information may not be used in any manner outside this litigation.

6 (b) **Limited Third-Party Disclosures.** The parties and counsel for the parties
7 shall not disclose or permit the disclosure of any Confidential Information to any third person or
8 entity except as set forth in subparagraphs (1)-(9). Subject to these requirements, the following
9 categories of persons may be allowed to review Confidential Information:

10 (1) **Counsel.** Counsel for the parties and employees of counsel who have
11 responsibility for the action;

12 (2) **Parties.** Individual parties and employees of a party but only to the
13 extent counsel determines in good faith that the employee's assistance is reasonably necessary to
14 the conduct of the litigation in which the information is disclosed;

15 (3) **The Court and its personnel;**

16 (4) **Court Reporters and Recorders.** Court reporters and recorders
17 engaged for depositions;

18 (5) **Contractors.** Those persons specifically engaged for the limited
19 purpose of making copies of documents or organizing or processing documents, including outside
20 vendors hired to process electronically stored documents;

21 (6) **Consultants and Experts.** Consultants, investigators, or experts
22 employed by the parties or counsel for the parties to assist in the preparation and trial of this action
23 but only after such persons have completed the certification contained in Attachment A,
24 Acknowledgment of Understanding and Agreement to Be Bound;

25 (7) **Witnesses at depositions.** During their depositions, witnesses in this
26 action to whom disclosure is reasonably necessary. Witnesses shall not retain a copy of
27 documents containing Confidential Information, except witnesses may receive a copy of all

1 exhibits marked at their depositions in connection with review of the transcripts. Pages of
2 transcribed deposition testimony or exhibits to depositions that are designated as Confidential
3 Information pursuant to the process set out in this Order must be separately bound by the court
4 reporter and may not be disclosed to anyone except as permitted under this Order.

5 (8) Author or recipient. The author or recipient of the document (not
6 including a person who received the document in the course of litigation); and

7 (9) Others by Consent. Other persons only by written consent of the
8 producing party or upon order of the Court and on such conditions as may be agreed or ordered.

9 (c) **Highly Confidential Information.** Nothing in this Order precludes the
10 parties from agreeing that certain documents or information, referred to herein as “Highly
11 Confidential Information,” shall be given added protection. Highly Confidential Information is
12 Confidential Information that the designating party in good faith believes would create a
13 substantial risk of serious financial or other injury, if disclosed to another party or non-party, and
14 that such risk cannot be avoided by less restrictive means. A party may designate information or
15 documents as Highly Confidential by marking the documents in the same manner that
16 Confidential Information is marked pursuant to paragraph 3(a) of this Order, except that the
17 documents shall be marked “HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE
18 ORDER.” Highly Confidential Information shall be treated identically to Confidential
19 Information under the terms of this Order, with the exception that Highly Confidential may not be
20 reviewed by “Parties,” as that term is used and defined in paragraph 5(b)(2) of this Order.

21 (d) **Control of Documents.** Counsel for the parties shall make reasonable
22 efforts to prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel
23 shall maintain the originals of the forms signed by persons acknowledging their obligations under
24 this Order for a period of one year after the termination of the case.

25 6. **Inadvertent Failure to Designate.** An inadvertent failure to designate a document
26 as Confidential Information does not, standing alone, waive the right to so designate the
27 document; provided, however, that a failure to serve a timely Notice of Designation of deposition

1 testimony as required by this Order, even if inadvertent, waives any protection for deposition
2 testimony. If a party designates a document as Confidential Information after it was initially
3 produced, the receiving party, on notification of the designation, must make a reasonable effort to
4 assure that the document is treated in accordance with the provisions of this Order. No party shall
5 be found to have violated this Order for failing to maintain the confidentiality of material during a
6 time when that material has not been designated Confidential Information, even where the failure
7 to so designate was inadvertent and where the material is subsequently designated Confidential
8 Information.

9 7. **Unauthorized Disclosure of Protected Material.** If a receiving party learns that,
10 by inadvertence or otherwise, it has disclosed Confidential Information to any person or in any
11 circumstance not authorized under this Order, the receiving party must immediately (a) notify in
12 writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all
13 unauthorized copies of the Confidential Information, (c) inform the person or persons to whom
14 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or
15 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
16 Exhibit A.

17 8. **Inadvertent Production of Privileged or Otherwise Protected Material.** When a
18 Producing Party gives notice to Receiving Parties that certain inadvertently produced material is
19 subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
20 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
21 modify whatever procedure may be established in an e-discovery order that provides for
22 production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),
23 insofar as the parties reach an agreement on the effect of disclosure of a communication or
24 information covered by the attorney-client privilege or work product protection, the parties may
25 incorporate their agreement in the stipulated protective order submitted to the court.

26 7. **Filing of Confidential Information.** The parties agree to redact Confidential
27 Information contained in any materials filed in court and will, if necessary, present unredacted

1 copies of the confidential materials to the assigned judge for in camera review. This Order does
2 not, by itself, authorize the filing of any document under seal. Any party wishing to file a
3 document under seal in connection with a motion, brief or other submission to the Court must
4 comply with the applicable Federal Rules of Civil Procedure and the Local Rules of the United
District Court for the Eastern District of California.

5 8. **No Greater Protection of Specific Documents.** Except on privilege grounds not
6 addressed by this Order, no party may withhold information from discovery on the ground that it
7 requires protection greater than that afforded by this Order unless the party moves for an order
8 providing such special protection.

9 9. **Challenges by a Party to Designation as Confidential Information.** The
10 designation of any material or document as Confidential Information is subject to challenge by
11 any party. The following procedure shall apply to any such challenge.

12 (a) **Meet and Confer.** A party challenging the designation of Confidential
13 Information must do so in good faith and must begin the process by conferring directly with
14 counsel for the designating party. In conferring, the challenging party must explain the basis for
15 its belief that the confidentiality designation was not proper and must give the designating party an
16 opportunity to review the designated material, to reconsider the designation, and, if no change in
17 designation is offered, to explain the basis for the designation. The designating party must
18 respond to the challenge within five (5) business days.

19 (b) **Judicial Intervention.** A party that elects to challenge a confidentiality
20 designation may file and serve a motion that identifies the challenged material and sets forth in
21 detail the basis for the challenge. Each such motion must be accompanied by a competent
22 declaration that affirms that the movant has complied with the meet and confer requirements of
23 this procedure. The burden of persuasion in any such challenge proceeding shall be on the
24 designating party. Until the Court rules on the challenge, all parties shall continue to treat the
25 materials as Confidential Information under the terms of this Order.

26 10. **Action by the Court.** Applications to the Court for an order relating to materials
27 or documents designated Confidential Information shall be by motion. Nothing in this Order or
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1 any action or agreement of a party under this Order limits the Court's power to make orders
2 concerning the disclosure of documents produced in discovery or at trial.

3 **11. Use of Confidential Documents or Information at Trial.** Nothing in this Order
4 shall be construed to affect the use of any document, material, or information at any trial or
5 hearing. A party that intends to present or that anticipates that another party may present
6 Confidential Information at a hearing or trial shall bring that issue to the Court's and parties'
7 attention by motion or in a pretrial memorandum without disclosing the Confidential Information.
8 The Court may thereafter make such orders as are necessary to govern the use of such documents
9 or information at trial.

10 **12. Confidential Information Subpoenaed or Ordered Produced in Other**
11 **Litigation.**

12 (a) If a receiving party is served with a subpoena or an order issued in other
13 litigation that would compel disclosure of any material or document designated in this action as
14 Confidential Information, the receiving party must so notify the designating party, in writing,
15 immediately and in no event more than three court days after receiving the subpoena or order.
16 Such notification must include a copy of the subpoena or court order.

17 (b) The receiving party also must immediately inform in writing the party who
18 caused the subpoena or order to issue in the other litigation that some or all of the material covered
19 by the subpoena or order is the subject of this Order. In addition, the receiving party must deliver
20 a copy of this Order promptly to the party in the other action that caused the subpoena to issue.

21 (c) The purpose of imposing these duties is to alert the interested persons to the
22 existence of this Order and to afford the designating party in this case an opportunity to try to
23 protect its Confidential Information in the court from which the subpoena or order issued. The
24 designating party shall bear the burden and the expense of seeking protection in that court of its
25 Confidential Information, and nothing in these provisions should be construed as authorizing or
26 encouraging a receiving party in this action to disobey a lawful directive from another court. The
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1 obligations set forth in this paragraph remain in effect while the party has in its possession,
2 custody or control Confidential Information by the other party to this case.

3 13. **Challenges by Members of the Public to Sealing Orders.** A party or interested
4 member of the public has a right to challenge the sealing of particular documents that have been
5 filed under seal, and the party asserting confidentiality will have the burden of demonstrating the
6 propriety of filing under seal.

7 14. **Obligations on Conclusion of Litigation.**

8 (a) **Order Continues in Force.** Unless otherwise agreed or ordered, this Order
9 shall remain in force after dismissal or entry of final judgment not subject to further appeal.

10 (b) **Obligations at Conclusion of Litigation.** Within sixty-three days after
11 dismissal or entry of final judgment not subject to further appeal, all Confidential Information and
12 documents marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” under this
13 Order, including copies as defined in ¶ 3(a), shall be returned to the producing party unless: (1) the
14 document has been offered into evidence or filed without restriction as to disclosure; or (2) party
15 elects to destroy the documents and certifies to the producing party that it has done so.

16 (c) **Retention of Work Product and one set of Filed Documents.**

17 Notwithstanding the above requirements to return or destroy documents, counsel may retain (1)
18 attorney work product, including an index that refers or relates to designated Confidential
19 Information so long as that work product does not duplicate verbatim substantial portions of
20 Confidential Information, and (2) one complete set of all documents filed with the Court including
21 those filed under seal. Any retained Confidential Information shall continue to be protected under
22 this Order. An attorney may use his or her work product in subsequent litigation, provided that its
23 use does not disclose or use Confidential Information.

24 (d) **Deletion of Documents filed under Seal from Electronic Case Filing**
25 **(ECF) System.** Filings under seal shall be deleted from the ECF system only upon order of the
26 Court.

1 15. **Order Subject to Modification.** This Order shall be subject to modification only
2 by the written agreement of the parties.

3 16. **No Prior Judicial Determination.** This Order is entered based on the
4 representations and agreements of the parties and for the purpose of facilitating discovery. Nothing
5 herein shall be construed or presented as a judicial determination that any document or material
6 designated Confidential Information by counsel or the parties is entitled to protection under Rule
7 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule
8 on a specific document or issue.

9 17. **Persons Bound.** This Order shall take effect when entered and shall be binding
10 upon all counsel of record and their law firms, the parties, and persons made subject to this Order
11 by its terms.

12 18. **Remedies for Breach.** In addition to any remedy provided in law or equity, the
13 parties shall be entitled to bring a motion, action or other appropriate proceeding to enjoin any
14 breach of this Order, including but not limited to enjoin any breach of the non-use and non-
15 disclosure obligations set forth in Paragraphs 5, 12 and 14 of this Order. The prevailing party in
16 any motion, action or other appropriate proceeding arising out of or relating to a breach of this
17 Order shall be entitled to recover its reasonable attorneys’ fees and costs. For the avoidance of
18 doubt, a party may also seek any damages resulting from another party’s breach of this Order.

19 The stipulation may be executed in counterparts.

20 Dated: January 17, 2018

21 LAW OFFICE OF RICHARD J. MEECHAN

22
23 By /s/ Benjamin Karpilow (as authorized on 1/17/18)
 RICHARD J. MEECHAN
24 BENJAMIN K. KARPILOW
 Attorneys for Plaintiff
25 Dan Frost

1 Dated: January 23, 2018

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3
4 By



5 PAUL S. COWIE
6 PATRICIA M. JENG
7 REANNE SWAFFORD-HARRIS
8 Attorneys for Defendant
9 Swift Transportation Co. of Arizona, LLC
10 (erroneously sued herein as "Swift Transportation
11 Company, Inc.")

11 Pursuant to Stipulation, IT IS SO ORDERED.*

* With respect to paragraph 7, no document shall be filed under seal unless the party seeking to file under seal demonstrates good cause for sealing for filing in non-dispositive matters and compelling reasons for filing under seal in dispositive matters.

See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1179-1180 (9th Cir. 2006)

12
13 Dated: February 15, 2018

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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STIPULATION FOR PRIVATE PROTECTIVE ORDER

ATTACHMENT A

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND**

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The undersigned hereby acknowledges that he/she has read the Stipulation for Private Protective Order dated _____ in the matter of Dan Frost v. Swift Transportation Company, Inc., case no. 2:17-CV-01864-TLN-GGH (E.D. Cal.) and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Eastern District of California in matters relating to the Order and understands that the terms of the Order obligate him/her to use materials designated as Confidential Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title:

Employer:

Business Address

Date: _____

Signature