

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLAN LOYD CAGAS, an individual,

Plaintiff,

v.

F/V PACIFIC HORIZON, IMO Number
8133023, her engines, tackle, apparel,
furniture, and appurtenances, in rem;
PACIFIC HORIZON FISHING, LLC (an
unknown business entity), in personam;
and DOES 1 through 20, inclusive,

Defendant.

Case No. 3:20-cv-02111-MMA-KSC
ADMIRALTY

**STIPULATED PROTECTIVE
ORDER**

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price,

1 marketing or other commercial information, as is contemplated by Federal Rule of Civil
2 Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such
3 materials as much as practical during the litigation. THEREFORE:

4 DEFINITIONS

5 1. The term “confidential information” will mean and include information
6 contained or disclosed in any materials, including documents, portions of documents,
7 answers to interrogatories, responses to requests for admissions, trial testimony, deposition
8 testimony, and transcripts of trial testimony and depositions, including data, summaries,
9 and compilations derived therefrom that is deemed to be confidential information by any
10 party to which it belongs.

11 2. The term “materials” will include, but is not be limited to: documents;
12 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
13 material that identify customers or potential customers; price lists or schedules or other
14 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
15 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
16 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
17 compilations from which information can be obtained and translated into reasonably usable
18 form through detection devices; sketches; drawings; notes (including laboratory notebooks
19 and records); reports; instructions; disclosures; other writings; models and prototypes and
20 other physical objects.

21 3. The term “counsel” will mean outside counsel of record, and other attorneys,
22 paralegals, secretaries, and other support staff employed in the law firms representing the
23 parties: Banning LLP (Plaintiff) and Cox, Wootton, Lerner et al., (Defendants)

24 GENERAL RULES

25 4. Each party to this litigation that produces or discloses any materials, answers
26 to interrogatories, responses to requests for admission, trial testimony, deposition
27 testimony, and transcripts of trial testimony and depositions, or information that the

28 ///

1 producing party believes should be subject to this Protective Order may designate the same
2 as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

3 a. Designation as “CONFIDENTIAL”: Any party may designate information as
4 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the
5 unrestricted disclosure of such information could be potentially prejudicial to the business
6 or operations of such party.

7 b. Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any party
8 may designate information as “CONFIDENTIAL - FOR COUNSEL ONLY” only if, in
9 the good faith belief of such party and its counsel, the information is among that considered
10 to be most sensitive by the party, including but not limited to trade secret or other
11 confidential research, development, financial or other commercial information.

12 5. In the event the producing party elects to produce materials for inspection, no
13 marking need be made by the producing party in advance of the initial inspection. For
14 purposes of the initial inspection, all materials produced will be considered as
15 “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated as such pursuant to
16 the terms of this Order. Thereafter, upon selection of specified materials for copying by the
17 inspecting party, the producing party must, within a reasonable time prior to producing
18 those materials to the inspecting party, mark the copies of those materials that contain
19 confidential information with the appropriate confidentiality marking.

20 6. Whenever a deposition taken on behalf of any party involves a disclosure of
21 confidential information of any party:

22 a. the deposition or portions of the deposition must be designated as containing
23 confidential information subject to the provisions of this Order; such
24 designation must be made on the record whenever possible, but a party may
25 designate portions of depositions as containing confidential information after
26 transcription of the proceedings; [A] party will have until fourteen (14) days
27 after receipt of the deposition transcript to inform the other party or parties to

28 ///

1 the action of the portions of the transcript to be designated
2 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

3 b. the disclosing party will have the right to exclude from attendance at the
4 deposition, during such time as the confidential information is to be disclosed,
5 any person other than the deponent, counsel (including their staff and
6 associates), the court reporter, and the person(s) agreed upon pursuant to
7 paragraph 8 below; and

8 c. the originals of the deposition transcripts and all copies of the deposition must
9 bear the legend “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL
10 ONLY,” as appropriate, and the original or any copy ultimately presented to
11 a court for filing must not be filed unless it can be accomplished under seal,
12 identified as being subject to this Order, and protected from being opened
13 except by order of this Court.

14 7. All confidential information designated as “CONFIDENTIAL” or
15 “CONFIDENTIAL FOR COUNSEL ONLY” must not be disclosed by the receiving party
16 to anyone other than those persons designated within this order and must be handled in the
17 manner set forth below and, in any event, must not be used for any purpose other than in
18 connection with this litigation, unless and until such designation is removed either by
19 agreement of the parties, or by order of the Court.

20 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must
21 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by
22 independent experts under the conditions set forth in this Paragraph. The right of any
23 independent expert to receive any confidential information will be subject to the advance
24 approval of such expert by the producing party or by permission of the Court. The party
25 seeking approval of an independent expert must provide the producing party with the name
26 and curriculum vitae of the proposed independent expert, and an executed copy of the form
27 attached hereto as Exhibit A, in advance of providing any confidential information of the
28 producing party to the expert. Any objection by the producing party to an independent

1 expert receiving confidential information must be made in writing within fourteen (14)
2 days following receipt of the identification of the proposed expert. Confidential
3 information may be disclosed to an independent expert if the fourteen (14) day period has
4 passed and no objection has been made. The approval of independent experts must not be
5 unreasonably withheld.

6 9. Information designated “confidential” must be viewed only by counsel (as
7 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the
8 terms of paragraph 8), by court personnel, and by the additional individuals listed below,
9 provided each such individual has read this Order in advance of disclosure and has agreed
10 in writing to be bound by its terms:

- 11 a) Executives who are required to participate in policy decisions with reference
12 to this action;
- 13 b) Technical personnel of the parties with whom Counsel for the parties find it
14 necessary to consult, in the discretion of such counsel, in preparation for trial
15 of this action; and
- 16 c) Stenographic and clerical employees associated with the individuals identified
17 above.

18 10. With respect to material designated “CONFIDENTIAL” or
19 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the
20 document to be its originator, author or a recipient of a copy of the document, may be
21 shown the same.

22 11. All information which has been designated as “CONFIDENTIAL” or
23 “CONFIDENTIAL -FOR COUNSEL ONLY” by the producing or disclosing party, and
24 any and all reproductions of that information, must be retained in the custody of the counsel
25 for the receiving party identified in paragraph 3, except that independent experts authorized
26 to view such information under the terms of this Order may retain custody of copies such
27 as are necessary for their participation in this litigation.

28 ///

1 12. Before any materials produced in discovery, answers to interrogatories,
2 responses to requests for admissions, deposition transcripts, or other documents which are
3 designated as confidential information are filed with the Court for any purpose, the party
4 seeking to file such material must seek permission of the Court to file the material under
5 seal.

6 13. At any stage of these proceedings, any party may object to a designation of
7 the materials as confidential information. The party objecting to confidentiality must
8 notify, in writing, counsel for the designating party of the objected-to materials and the
9 grounds for the objection. If the dispute is not resolved consensually between the parties
10 within seven (7) days of receipt of such a notice of objections, the objecting party may
11 move the Court for a ruling on the objection. The materials at issue must be treated as
12 confidential information, as designated by the designating party, until the Court has ruled
13 on the objection or the matter has been otherwise resolved.

14 14. All confidential information must be held in confidence by those inspecting
15 or receiving it, and must be used only for purposes of this action. Counsel for each party,
16 and each person receiving confidential information must take reasonable precautions to
17 prevent the unauthorized or inadvertent disclosure of such information. If confidential
18 information is disclosed to any person other than a person authorized by this Order, the
19 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
20 relating to the unauthorized disclosure to the attention of the other parties and, without
21 prejudice to any rights and remedies of the other parties, make every effort to prevent
22 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

23 15. No party will be responsible to another party for disclosure of confidential
24 information under this Order if the information in question is not labeled or otherwise
25 identified as such in accordance with this Order.

26 16. If a party, through inadvertence, produces any confidential information
27 without labeling or marking or otherwise designating it as such in accordance with this
28 Order, the designating party may give written notice to the receiving party that the

1 document or thing produced is deemed confidential information, and that the document or
2 thing produced should be treated as such in accordance with that designation under this
3 Order. The receiving party must treat the materials as confidential, once the designating
4 party so notifies the receiving party. If the receiving party has disclosed the materials before
5 receiving the designation, the receiving party must notify the designating party in writing
6 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
7 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL” or
8 “CONFIDENTIAL - FOR COUNSEL ONLY” - SUBJECT TO PROTECTIVE ORDER.

9 17. Nothing within this order will prejudice the right of any party to object to the
10 production of any discovery material on the grounds that the material is protected as
11 privileged or as attorney work product.

12 18. Nothing in this Order will bar counsel from rendering advice to their clients
13 with respect to this litigation and, in the course thereof, relying upon any information
14 designated as confidential information, provided that the contents of the information must
15 not be disclosed.

16 19. This Order will be without prejudice to the right of any party to oppose
17 production of any information for lack of relevance or any other ground other than the mere
18 presence of confidential information. The existence of this Order must not be used by either
19 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
20 Procedure.

21 20. Nothing within this order will be construed to prevent disclosure of
22 confidential information if such disclosure is required by law or by order of the Court.

23 21. Upon final termination of this action, including any and all appeals, counsel
24 for each party must, upon request of the producing party, return all confidential information
25 to the party that produced the information, including any copies, excerpts, and summaries
26 of that information, or must destroy same at the option of the receiving party, and must
27 purge all such information from all machine-readable media on which it resides.
28 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,

1 memoranda, motions, and other documents filed with the Court that refer to or incorporate
2 confidential information, and will continue to be bound by this Order with respect to all
3 such retained information. Further, attorney work product materials that contain
4 confidential information need not be destroyed, but, if they are not destroyed, the person
5 in possession of the attorney work product will continue to be bound by this Order with
6 respect to all such retained information.

7 22. The restrictions and obligations set forth within this order will not apply to
8 any information that: (a) the parties agree should not be designated confidential
9 information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the
10 parties agree, or the Court rules, has become public knowledge other than as a result of
11 disclosure by the receiving party, its employees, or its agents in violation of this Order; or
12 (d) has come or will come into the receiving party's legitimate knowledge independently
13 of the production by the designating party. Prior knowledge must be established by pre-
14 production documentation.

15 23. The restrictions and obligations within this order will not be deemed to
16 prohibit discussions of any confidential information with anyone if that person already has
17 or obtains legitimate possession of that information.

18 24. Transmission by email or some other currently utilized method of
19 transmission is acceptable for all notification purposes within this Order.

20 25. This Order may be modified by agreement of the parties, subject to approval
21 by the Court.

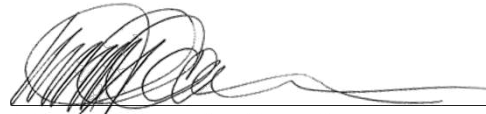
22 26. Nothing shall be filed under seal, and the Court shall not be required to take
23 any action, without separate prior order by the Judge before whom the hearing or
24 proceeding will take place, after application by the affected party with appropriate notice
25 to opposing counsel. The parties shall follow and abide by applicable law, including Civ.
26 L.R. 79.2, ECF Administrative Policies and Procedures, Section II.j, and the chambers'
27 rules, with respect to filing documents under seal.

28 ///

1 27. The Court may modify the terms and conditions of this Order for good cause,
2 in the interests of justice, for public policy reasons, or on its own order at any time in these
3 proceedings. The parties prefer that the Court provide them with notice of the Court's intent
4 to modify the Order and the content of those modifications, prior to entry of such an order.

5 IT IS SO ORDERED.

6 Dated: July 29, 2022



Hon. Karen S. Crawford
United States Magistrate Judge

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28