

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 20, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

COLUMBIA RIVERKEEPER,

Plaintiff,

v.

CRUNCH PAK, LLC,

Defendant.

NO: 2:18-CV-387-RMP

PROTECTIVE ORDER

BEFORE THE COURT is the parties' Proposed Stipulated Protective Order, ECF No. 19. Having reviewed the protective order proposed by the parties, and the remaining record, the Court finds good cause to grant the motion and enter the agreed-upon protective order.

Accordingly, **IT IS HEREBY ORDERED** that the parties' Stipulated Motion for Protective Order, **ECF No. 19**, is **GRANTED**. The protective order is set forth below:

1. Plaintiff Columbia Riverkeeper and Defendant Crunch Pak, LLC and their respective counsel (collectively the "parties") have stipulated that

1 discovery in this action is likely to involve production of confidential,  
2 proprietary, or private information—including, but not limited to,  
3 confidential commercial and financial information—for which special  
4 protection may be warranted. This agreement does not confer blanket  
5 protection on all disclosures or responses to discovery. Instead, the  
6 protection it affords from public disclosure and use extends only to the  
7 limited information or items that are entitled to confidential treatment  
8 under the applicable legal principles, and it does not presumptively entitle  
9 parties to file confidential information under seal. The procedures that  
10 must be followed and the standards that will be applied when a party seeks  
11 permission from the Court to file material under seal will be governed by  
12 applicable law.

- 13 2. As used in this order, the term “Confidential Material” means documents  
14 or information which contain proprietary technical or commercial or  
15 information designated as such by a party producing such information, and  
16 constituting trade secrets, confidential know-how, proprietary information,  
17 and the like, which relates to a product or products or a commercial  
18 operation used or proposed to be used, or which relates to or contains  
19 research or commercial information generated by said party, whether  
20 revealed during a deposition, in a document, in an interrogatory answer or  
21 otherwise, in connection with this litigation. This definition shall include,

1 but is not limited to, any and all documents or information relating to the  
2 financial operations or assets, or general financial status, of one of the  
3 parties.

- 4 3. Any document, any written statement, and any copy, excerpt, synopsis,  
5 summary or note pertaining to any such document or statement, or to any  
6 oral statement which contains confidential information, shall be bates  
7 stamped conspicuously with the word “CONFIDENTIAL” prior to  
8 production. A party producing “CONFIDENTIAL” documents will  
9 segregate the documents as to which confidentiality is claimed, provide a  
10 list of said documents, or otherwise “flag” the documents so that other  
11 parties are notified of the claims.
- 12 4. The protections conferred by this agreement cover not only confidential  
13 material (as defined above), but also (1) any information copied or  
14 extracted from confidential material; (2) all copies, excerpts, summaries, or  
15 compilations of confidential material; and (3) any testimony,  
16 conversations, or presentations by parties or their counsel that might reveal  
17 confidential material. However, the protections conferred by this  
18 agreement do not cover information that is in the public domain or  
19 becomes part of the public domain through trial or otherwise.
- 20 5. A receiving party may use confidential material that is disclosed or  
21 produced by another party or by a non-party in connection with this case

1 only for prosecuting, defending, or attempting to settle this litigation.

2 Confidential material may be disclosed only to the categories of persons

3 and under the conditions described in this agreement. Confidential

4 material must be stored and maintained by a receiving party at a location

5 and in a secure manner that ensures that access is limited to the persons

6 authorized under this agreement.

7 6. Unless otherwise ordered by the court or permitted in writing by the

8 designating party, a receiving party may disclose any confidential material

9 only to:

10 a. the receiving party's counsel of record in this action, as well as

11 employees of counsel to whom it is reasonably necessary to disclose

12 the information for this litigation;

13 b. the officers, directors, and employees (including in house counsel)

14 of the receiving party to whom disclosure is reasonably necessary

15 for this litigation;

16 c. experts and consultants to whom disclosure is reasonably necessary

17 for this litigation and who have signed the "Acknowledgment and

18 Agreement to Be Bound" (Exhibit A);

19 d. the court, court personnel, and court reporters and their staff;

20 e. copy or imaging services retained by counsel to assist in the

21 duplication of confidential material, provided that counsel for the

1 party retaining the copy or imaging service instructs the service not  
2 to disclose any confidential material to third parties and to  
3 immediately return all originals and copies of any confidential  
4 material;

5 f. during their depositions, witnesses in the action to whom disclosure  
6 is reasonably necessary and who have signed the “Acknowledgment  
7 and Agreement to Be Bound,” unless otherwise agreed by the  
8 designating party or ordered by the court. Pages of transcribed  
9 deposition testimony or exhibits to depositions that reveal  
10 confidential material must be separately bound by the court reporter  
11 and may not be disclosed to anyone except as permitted under this  
12 agreement;

13 g. any mediator or other third party engaged by the Parties and who  
14 have signed the “Agreement to Be Bound by Protective Order”; or

15 h. the author or recipient of a document containing the information or a  
16 custodian or other person who otherwise possessed or knew the  
17 information.

18 7. Before filing confidential material or discussing or referencing such  
19 material in court filings, the filing party shall confer with the Designating  
20 Party to determine whether the Designating Party will remove the  
21 confidential designation, whether the document can be redacted, or

1 whether a motion to seal or stipulation and proposed order is warranted.  
2 Without written permission from the Designating Party or a court order  
3 secured after appropriate notice to all interested persons, a Party may not  
4 file in the public record in this action any confidential material. A Party  
5 that seeks to file under seal any confidential material must comply with  
6 applicable law. If a Receiving Party's request to file confidential material  
7 under seal is denied by the court, then the Receiving Party may not file the  
8 information in the public record unless otherwise instructed by the court.

9 8. Each party or non-party that designates information or items for protection  
10 under this Stipulated Protective Order must use good faith efforts to limit  
11 any such designation to specific material that qualifies under the  
12 appropriate standards. A Designating Party must use good faith efforts to  
13 designate for protection only those parts of materials, documents, items, or  
14 oral or written communications that qualify—so that other portions of the  
15 material, documents, items, or communications for which protection is not  
16 warranted are not swept unjustifiably within the ambit of this Stipulated  
17 Protective Order.

18 9. If it comes to a Party's or a non-party's attention that information or items  
19 that it designated for protection do not qualify for protection, the Party or  
20 non-party must promptly notify all other parties that it is withdrawing the  
21 mistaken designation.

1 10. Any Party may challenge a designation of confidentiality at any time.

2 Unless a prompt challenge to a Designating Party's confidentiality  
3 designation is necessary to avoid foreseeable, substantial unfairness,  
4 unnecessary economic burdens, or a later significant disruption or delay of  
5 the litigation, a Party does not waive its right to challenge a confidentiality  
6 designation by electing not to mount a challenge promptly after the  
7 original designation is disclosed.

8 11. The Challenging Party shall initiate the dispute resolution process by  
9 providing written notice of each designation it is challenging and  
10 describing the basis for each challenge. The parties shall attempt to  
11 resolve each challenge in good faith and must begin the process by  
12 conferring directly (in voice to voice dialogue; other forms of  
13 communication are not sufficient) within 14 days of the date of service of  
14 notice. In conferring, the Challenging Party must explain the basis for its  
15 belief that the confidentiality designation was not proper and must give the  
16 Designating Party an opportunity to review the designated material, to  
17 reconsider the circumstances, and, if no change in designation is offered, to  
18 explain the basis for the chosen designation. A challenging Party may  
19 proceed to the next stage of the challenge process only if it has engaged in  
20 this meet and confer process first or establishes that the Designating Party  
21 is unwilling to participate in the meet and confer process in a timely

1 manner. The parties must attempt to resolve any dispute regarding  
2 confidential designations without court involvement. Any motion  
3 regarding confidential designations or for a protective order must include a  
4 certification, in the motion or in a declaration or affidavit, that the movant  
5 has engaged in a good faith meet and confer conference with other affected  
6 parties in an effort to resolve the dispute without court action. The  
7 certification must list the date, manner, and participants to the conference.

8 12. If the parties cannot resolve a challenge without court intervention, the  
9 Challenging Party may issue a written notice to the Designating Party  
10 providing with specificity those materials as to which it still challenges the  
11 confidential designation. Within 21 days of such notice, the Designating  
12 Party may file and serve a motion to retain confidentiality under Local  
13 Civil Rule 7. Each such motion must be accompanied by a competent  
14 declaration affirming that the movant has complied with the meet and  
15 confer requirements imposed in the preceding paragraph. Failure by the  
16 Designating Party to make such a motion including the required  
17 declaration within 21 days shall automatically waive the confidentiality  
18 designation for each challenged designation. In addition, the Challenging  
19 Party may file a motion challenging a confidentiality designation at any  
20 time following conferral on the dispute, including a challenge to the  
21 designation of a deposition transcript or any portions thereof. Any motion



1 brought pursuant to this provision must be accompanied by a competent  
2 declaration affirming that the movant has complied with the meet and  
3 confer requirements imposed by the preceding paragraph. The burden of  
4 persuasion in any such challenge proceeding shall be on the Designating  
5 Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
6 to harass or impose unnecessary expenses and burdens on other parties)  
7 may expose the Challenging Party to sanctions. Unless the Designating  
8 Party has waived the confidentiality designation either in writing or by  
9 failing to file a motion to retain confidentiality as described above, all  
10 parties shall continue to afford the material in question the level of  
11 protection to which it is entitled under the Producing Party's designation  
12 until the court rules on the challenge.

13 13. If a receiving party learns that, by inadvertence or otherwise, it has  
14 disclosed confidential material to any person or in any circumstance not  
15 authorized under this agreement, the receiving party must immediately (a)  
16 notify in writing the designating party of the unauthorized disclosures, (b)  
17 use its best efforts to retrieve all unauthorized copies of the confidential  
18 material, (c) inform the person or persons to whom unauthorized  
19 disclosures were made of all the terms of this agreement, and (d) request  
20 that such person or persons execute the "Acknowledgment and Agreement  
21 to Be Bound."

1 14. When a producing party gives notice to receiving parties that certain  
2 inadvertently produced material is subject to a claim of privilege or other  
3 protection, the obligations of the receiving parties are those set forth in  
4 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not  
5 intended to modify whatever procedure may be established in an e-  
6 discovery order or agreement that provides for production without prior  
7 privilege review.

8 15. Within 60 days after the termination of this action, including all appeals,  
9 each receiving party must return all confidential material to the producing  
10 party, including all copies, extracts and summaries thereof. Alternatively,  
11 the parties may agree upon appropriate methods of destruction.

12 Notwithstanding this provision, counsel are entitled to retain one archival  
13 copy of all documents filed with the court, trial, deposition, and hearing  
14 transcripts, correspondence, deposition and trial exhibits, expert reports,  
15 attorney work product, and consultant and expert work product, even if  
16 such materials contain confidential material. The confidentiality  
17 obligations imposed by this agreement shall remain in effect until a  
18 designating party agrees otherwise in writing or a court orders otherwise.

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1 Even after the termination of this litigation, the confidentiality obligations  
2 imposed by this Stipulated Protective Order shall remain in effect until a  
3 Designating Party agrees otherwise in writing or a court order otherwise directs.

4 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
5 Order and provide copies to counsel.

6 **DATED** May 20, 2019.

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8 *s/ Rosanna Malouf Peterson*  
9 ROSANNA MALOUF PETERSON  
10 United States District Judge  
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