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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 U.S. EQUAL EMPLOYMENT
12 OPPORTUNITY COMMISSION,
13 Plaintiff,
14 v.
15 PC IRON, INC. d/b/a PACIFIC COAST
16 IRON, INC.,
17 Defendant.

Case No.: 16-CV-2372-CAB(WVG)

**PROTECTIVE ORDER RE: EDD
SUBPOENA**

[Doc. No. 38.]

18 The Court recognizes that at least some of the documents and information Plaintiff
19 U.S. Equal Employment Opportunity Commission (“EEOC”) obtained through discovery
20 in the above-captioned action are protected by a right to privacy and normally kept
21 confidential. Accordingly, the parties hereby stipulate to, have agreed to be bound by, and
22 petition the Court to enforce the terms of this Protective Order in this action.

23 Documents obtained by the EEOC during the course of this litigation may contain
24 information protected by a right to privacy under California law, trade secret, financial, or
25 other commercial information, as is contemplated by Federal Rule of Civil Procedure
26 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as
27 much as practical during the litigation. THEREFORE:
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2 DEFINITIONS

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

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

19 3. The term "counsel" will mean outside counsel of record, and other attorneys,
20 paralegals, secretaries, and other support staff employed in the law firms identified below:
21 U.S. Equal Employment Opportunity Commission ("EEOC") for Plaintiff EEOC,
22 Bokhour Law Group, P.C. for Plaintiff-Intervenor Elsa Perez, and Simpson, Delmore, &
23 Greene, P.C. for Defendant Pacific Coast Iron, Inc.

24 GENERAL RULES

25 4. The parties hereby stipulate and agree that all documents produced by the
26 California Employment Development Department on or about October 4, 2017 (EDD
27 Documents, bates stamped EDD 0001-0141) in response to a subpoena issued by the EEOC
28 in this action are subject to this Protective Order and are hereby designated as

1 "CONFIDENTIAL."

2 5. EDD Documents, bates stamped EDD 0001-0141, that have been designated as
3 "CONFIDENTIAL" must not be disclosed or produced by any party to anyone other than
4 those persons designated within this Order and must be handled in the manner set forth
5 below and, in any event, must not be used for any purpose other than in connection with
6 this litigation, unless and until such designation is removed either by agreement of the
7 parties, or by order of the Court.

8 6. EDD Documents, bates stamped EDD 0001-0141, designated as
9 "CONFIDENTIAL" must be viewed only by counsel (as defined in paragraph 3) of the
10 receiving party, and by individuals identified in paragraph 7. Prior to reviewing or gaining
11 access to this Confidential Information, each Party must ensure that any non-party
12 witness(s) and any expert witness(s) execute an agreement to be bound by the terms of this
13 Order, (See Exhibit A attached hereto, Acknowledgement and Agreement to be Bound
14 ("Acknowledgement")). Witnesses are prohibited from disclosing Confidential
15 Information outside this action. The Parties shall maintain the signed acknowledgments
16 that each acquires. Disclosure of the Confidential Information to any other person or entity
17 who has not signed an Acknowledgement is not permitted except as stated below.

18 7. Information designated "CONFIDENTIAL" must be viewed only by counsel
19 (as defined in paragraph 3) of the receiving party, by independent experts, and by the
20 additional individuals listed below, provided each such individual has read this Order in
21 advance of disclosure and has agreed in writing to be bound by its terms:

- 22 a) Executives who are required to participate in policy decisions with
23 reference to this action;
- 24 b) Technical personnel of the parties with whom Counsel for the parties
25 find it necessary to consult, in the discretion of such counsel, in
26 preparation for trial of this action;
- 27 c) Each witness only with respect to Confidential Information pertaining
28 to himself or herself; and

1 d) Stenographic and clerical employees associated with the individuals
2 identified above.

3 8. With respect to material designated "CONFIDENTIAL," any person
4 indicated on the face of the document to be its originator, author or a recipient of a copy
5 of the document, may be shown the same.

6 9. All information which has been designated as "CONFIDENTIAL" by the
7 producing or disclosing party, and any and all reproductions of that information, must be
8 retained in the custody of the counsel for the receiving party identified in Paragraph 3,
9 except that independent experts authorized to view such information under the terms of
10 this Order may retain custody of copies such as are necessary for their participation in this
11 litigation.

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

21 11. No party will be responsible to another party for disclosure of Confidential
22 Information under this Order if the information in question is not labeled or otherwise
23 identified as such in accordance with this Order.

24 12. If a party, through inadvertence, produces any Confidential Information
25 without labeling or marking or otherwise designating it as such in accordance with this
26 Order, the designating party may give written notice to the receiving party that the
27 document or thing produced is deemed Confidential Information, and that the document or
28 thing produced should be treated as such in accordance with that designation under this

1 Order. The receiving party must treat the materials as confidential, once the designating
2 party so notifies the receiving party. If the receiving party has disclosed the materials before
3 receiving the designation, the receiving party must notify the designating party in writing
4 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
5 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL.”

6 13. Nothing within this order will prejudice the right of any party to object to the
7 production of any discovery material on the grounds that the material is protected as
8 privileged or as attorney work product.

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

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

18 16. Before any Confidential Information is filed with the Court, the party seeking
19 to file Confidential Information must seek permission of the Court to file the material under
20 seal, except upon consent of the parties or upon further order of the Court. As an alternative
21 to seeking to file the records under seal, a party seeking to file the Confidential Information
22 for dispositive motions may seek an order from the Court finding that the need for public
23 access to dispositive pleadings outweighs the interests in keeping the information and/or
24 records confidential. An application to file a document under seal or for an order finding
25 the need for public access outweighs the interest in keeping the information and/or records
26 confidential shall be served on opposing counsel, and on the person or entity that has
27 custody and control of the document, if different from opposing counsel. If opposing
28 counsel, or the person or entity who has custody and control of the document, wishes to

1 oppose the application, he/she must contact the chambers of the judge who will rule on the
2 application, to notify the judge's staff that an opposition to the application will be filed.
3 Notwithstanding the above, the parties agree to comply with the Local Rules regarding
4 procedures for filing papers and documents under seal for any materials that have been
5 designated as CONFIDENTIAL under paragraph 4.

6 17. No document shall be filed under seal unless counsel secures a court order
7 allowing the filing of a document under seal. An application to file a document under seal
8 shall be served on opposing counsel, and on the person or entity that has custody and
9 control of the document, if different from opposing counsel. If opposing counsel, or the
10 person or entity who has custody and control of the document, wishes to oppose the
11 application, he/she must contact the chambers of the judge who will rule on the application,
12 to notify the judge's staff that an opposition to the application will be filed.

13 18. In the event this matter proceeds to trial, the parties agree that the issue of
14 whether the parties can use Confidential Information for trial purposes should be resolved
15 by the presiding district judge.

16 19. Nothing in this Order prevents the disclosure of Confidential Information
17 if such disclosure is required by law or by order of the Court. However, if any party subject
18 to this Protective Order must make a disclosure (including, but not limited to, responding
19 to a subpoena or an order issued in other litigation) of any information or items designated
20 in this action as "CONFIDENTIAL," the receiving party must promptly notify the party
21 opposing disclosure, and in no event more than ten (10) business days after receiving the
22 subpoena or order. Such notification must include a copy of the subpoena or court order.
23 The receiving party must also promptly inform in writing the party who caused the
24 subpoena or order to issue in the other litigation that some or all the material covered by
25 the subpoena or order is the subject of this Protective Order and must deliver a copy of this
26 Protective Order to the party seeking the information. The purpose of imposing these duties
27 is to alert the interested parties to the existence of this Protective Order and to afford the
28 designating party in this case an opportunity to try to protect its confidentiality interests in

1 the court from which the subpoena or order issued. The party opposing disclosure shall
2 bear the burdens and the expenses of seeking protection in that court of its confidential
3 material, and nothing in these provisions should be construed as authorizing or encouraging
4 a receiving party in this action to disobey a lawful directive from another court.

5 20. Upon final termination of this action, including any and all appeals, counsel
6 for each party shall destroy and not release to the public any Confidential Information
7 produced in discovery which are covered by this Stipulated Protective Order. With respect
8 to the EEOC, any Confidential Information contained in the EEOC's litigation files shall
9 be maintained in accordance with National Archives and Records Administration (NARA)
10 regulations and EEOC Records Management, regulations, orders, and procedures.
11 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
12 memoranda, motions, and other documents filed with the Court that refer to or incorporate
13 Confidential Information, and will continue to be bound by this Order with respect to all
14 such retained information. Further, attorney work product materials that contain
15 Confidential Information need not be destroyed, but, if they are not destroyed, the person
16 in possession of the attorney work product will continue to be bound by this Order with
17 respect to all such retained information.

18 21. The restrictions and obligations set forth within this order will not apply to
19 any information that: (a) the parties agree should not be designated Confidential
20 Information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the
21 parties agree, or the Court rules, has become public knowledge other than as a result of
22 disclosure by the receiving party, its employees, or its agents in violation of this Order; or
23 (d) has come or will come into the receiving party's legitimate knowledge independently
24 of the production by the designating party. Prior knowledge must be established by pre-
25 production documentation.

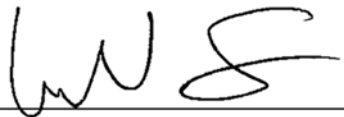
26 22. The restrictions and obligations within this Order will not be deemed to
27 prohibit discussions of any Confidential Information with anyone if that person already has
28 or obtains legitimate possession of that information.

1 23. This Order may be modified by written agreement of the parties, subject to
2 approval by the Court, and nothing in this Order abridges or limits the right of any person
3 to seek its modification by the Court in the future.

4 24. The Court may modify the terms and conditions of this Order for good cause,
5 or in the interest of justice, or on its own order at any time in these proceedings. The parties
6 prefer that the Court provide them with notice of the Court's intent to modify the Order and
7 the content of those modifications, prior to entry of such an order.

8 IT IS SO ORDERED.

9 DATED: January 17, 2018

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13 Hon. William V. Gallo
14 United States Magistrate Judge
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