

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

Mar 29, 2017

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ODELINDA PEREZ, RAUL SAUCEDO JR., LEONARDO SAUCEDO, ROBERT SANCHEZ, and J. JESUS VARGAS,

No. 1:16-CV-3015-SMJ

STIPULATED PROTECTIVE ORDER

Plaintiffs,

v.

MERCER CANYONS, INC. and WAFLA,

Defendants.

Pursuant to FRCP 26(c) and the stipulation of the parties, the Court hereby **GRANTS** the parties’ Stipulated Motion for Discovery Protective Order, **ECF No. 73**, and enters the following Protective Order.

Accordingly, **IT IS HEREBY ORDERED:**

1. Confidential Matter

a. As used herein, “Confidential Matter” shall mean any document, information, or specific portions thereof, furnished in the course of litigation—during discovery or otherwise—that is both (1) so designated by a party

1 as “Confidential” pursuant to subsection 1(b) below, and (2) that contains the
2 following:

3 i. Non-public and private, personal information, including
4 documents containing personal financial information, medical information, or
5 contact information; or

6 ii. Confidential and proprietary business information that provides
7 the party with a business advantage over its competitors. To the extent that
8 documents relate to matters that Defendant takes significant steps to protect in its
9 daily operations, such as through the use of non-disclosure and confidentiality
10 agreements with its employees (if any) such information can be designated as
11 confidential. The determination of whether produced material is Confidential shall
12 be made in the first instance by the party from whom discovery is sought. Each
13 party that designates information or documents for protection under this agreement
14 must take care to limit any such designation to specific material that qualifies under
15 the appropriate standards. The designating party must designate for protection only
16 those parts of material, documents, items, or oral or written communications that
17 qualify as confidential, so that other portions of the material, documents, items, or
18 communication for which protection is not warranted are not swept unjustifiably
19 within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose expose the designating party to sanctions. The protections conferred by this
4 agreement do not cover information that is in the public domain or becomes part of
5 the public domain through litigation or otherwise.

6 Notwithstanding the above, Defendant Mercer Canyons may, in the first
7 instance, designate as Confidential any document produced and designated as
8 confidential in Ruiz v. Mercer Canyons, Inc., 1:14-cv-03032-SAB (E.D. Wash.).
9 Designation of a document as Confidential in Ruiz shall not be conclusive as to the
10 appropriate status of the document; any such designation shall be subject to the
11 same procedure, set forth below, for challenging Confidential designations as is
12 applicable to other documents designated as Confidential, except that designating
13 as Confidential any document produced and designated as confidential in Ruiz shall
14 not subject Mercer to any sanctions under this Order.

15 If there is a disagreement between the parties as to whether particular
16 produced materials have been properly designated as Confidential, the dispute may
17 be resolved by the Court as provided for in this Order.

18 b. All documents, information, or things deemed Confidential
19 Matter by a party shall be marked or stamped as “Confidential.”
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1 c. Any documents or information not designated as “Confidential”
2 shall be excluded from this Order, provided, however, that inadvertent production
3 of any document or information without a “Confidential” designation shall not by
4 itself be deemed a waiver of confidentiality as to such matter, and a party thereafter
5 may designate the same as “Confidential” promptly upon being advised of or
6 discovering the inadvertent disclosure. Disclosure by any party of such matter prior
7 to notice of the confidential nature thereof shall not be deemed a violation of this
8 Order.

9 d. Except as expressly provided for in this Order, Confidential
10 Matter and any information contained therein shall not be communicated or
11 disclosed in any manner, directly or indirectly, to any person or entity, and may be
12 used only for the prosecution or defense of this litigation and for no other purpose.

13 2. Permitted Disclosure of Confidential Matter

14 a. Confidential Matter may be disclosed to any party, to counsel
15 for any party, and to other counsel and support staff assisting counsel in the conduct
16 of this action. Confidential Matter may also be disclosed to the Court, Court
17 personnel, and court reporters used in this litigation. Nothing in this Order shall
18 limit or prevent the use of any Confidential Matter in open court at hearings in, or
19 during trial of, this action, provided, however, that such use shall not relieve the
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1 parties of their obligations to seek to file Confidential Matter under seal when called
2 for by this Order.

3 b. Confidential Matter may be disclosed in good faith to third party
4 experts and consultants retained by a party to assist in preparation, settlement, trial,
5 or appeal of this action. Confidential Matter may also be disclosed to persons whose
6 depositions are noted or potential trial witnesses, as well as their counsel, only to
7 the extent counsel for the disclosing party determines in good faith that it is
8 reasonably necessary to do so. Prior to the disclosure of any Confidential Matter to
9 any permitted third party, the person to whom the disclosure is to be made shall
10 agree in writing, or on the record in the case of a deposition, to be bound by the
11 terms of this Order by, respectively, (1) signing an agreement in the form of
12 Attachment A hereto or (2) making a representation on the deposition record.

13 c. Confidential Matter may also be disclosed to any other person
14 upon written consent by the designating party.

15 3. Use in Depositions

16 A party may, either during a deposition or within thirty (30) days after
17 receiving the deposition transcript, designate portions of that transcript, and exhibits
18 thereto not already designated confidential, as “Confidential.” Confidential Matter
19 within the deposition transcript may be designated by underlining the portions of
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1 the pages that are confidential and marking such pages with substantially the
2 following legend: “Confidential—subject to protection pursuant to court order.”

3 4. Use in Briefs, Exhibits, Testimony, and Other Documents

4 The parties are free to designate any document not filed with the Court as
5 “Confidential” and limit its dissemination and use. However, there is a strong
6 presumption of public access to any document filed with the Court. Any party
7 including documents, transcripts, or any other paper containing any Confidential
8 Matter with any pleading, motion, deposition transcript, or other paper filed with
9 the Clerk of this Court shall, at that party’s option, either

10 (a) provide five court days advance written notice to the designating party
11 of the intent to submit Confidential Matter, identifying the specific Confidential
12 Matter to be filed and the date of the filing, so that the designating party may file a
13 motion to seal; if the designating party so moves on or before the date of filing, then
14 the filing party shall redact Confidential Matter from his or its public court filing
15 (with an unredacted bench copy provided to chambers) or, if necessary, file
16 documents containing Confidential Matter under seal; or

17 (b) file a separate motion or stipulation seeking an order from the Court
18 permitting the Confidential Matter to be filed under seal, so that the Court may make
19 particular findings justifying the limitation on public access as may be appropriate.

1 The burden is on the party proposing that a document be sealed to provide the
2 needed information so that the Court can determine whether all, a portion, or none
3 of the document may be filed under seal. Court findings and conclusions reflecting
4 the same and authorizing any sealing or redaction must also be filed.

5 5. Confidentiality Challenge

6 If a party challenges the confidential designation of any document or
7 information, it shall so notify the designating party in writing and provide that party
8 five (5) court days in which to consider the challenge. The parties agree that, during
9 that period, they will make a good faith effort to resolve any disputes concerning
10 the treatment of Confidential Matter. If the matter has not been resolved, the party
11 advocating confidentiality must move for such protection under Rule 26(c) within
12 ten (10) court days from the notification of the challenge, or the designation shall
13 be deemed abandoned.

14 6. Termination

15 After the termination of this action, this Order shall continue to be binding
16 upon the parties hereto and upon all persons to whom Confidential Matter has been
17 disclosed or communicated.

1 7. Modification

2 This Order may be modified in the event that the parties agree in writing to a
3 modification of the provisions hereof or such modification is ordered by this Court.
4 No party shall be prejudiced by having stipulated to this Order.

5 8. Remedies

6 The parties expressly acknowledge and agree that all remedies under CR 37
7 will be available to the Court, in its discretion, to sanction any violation of this
8 Order.

9 9. Scope of Protective Order

10 Nothing in this Order restricts any party from using or disclosing its own
11 confidential information for any purpose. If a designating party files Confidential
12 Matter, not under seal and without redaction, its designation shall be deemed
13 abandoned. Entry of this Order does not foreclose further agreements by the parties
14 to keep such documents, information, or things confidential or to apply to the Court
15 for protection of other documents, information, or things.

16 10. Retention of Jurisdiction

17 The parties and any other person subject to the terms of this Order agree that
18 this Court has and retains jurisdiction during this action and after this action is
19 terminated for the purpose of enforcing this Order.

ATTACHMENT A

AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER

I, _____, hereby acknowledge that I have received a copy of the Stipulated Protective Order entered in the matter of *Odelinda Perez, Raul Saucedo Jr., Leonardo Saucedo, Robert Sanchez, and J. Jesus Vargas v. Mercer Canyons, Inc and WAFLA*, in the United States District Court Eastern District of Washington, No. 1:16-cv-03015-SMJ. I have read and agree to be bound by all of the provisions of the Stipulated Protective Order. I agree (a) not to divulge any Confidential Matter to any other person; and (b) not to use any Confidential Matter for any purpose other than this litigation. In addition, I consent to the jurisdiction and contempt power of United States District Court Eastern District of Washington with respect to the enforcement of the Stipulated Protective Order.

DATED: _____.

Signature

Print Name