

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

No. 2:16-cv-00445-RSL

v.

STIPULATED PROTECTIVE ORDER

SAMSON TUG AND BARGE CO. INC.,  
DUWAMISH MARINE CENTER, INC.,  
JACQUELINE H. GILMUR, JAMES D.  
GILMUR, JAMES D. AND JACQUELINE H.  
GILMUR LIVING TRUST, and DUWAMISH  
METAL FAB, INC.,

Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle

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Case No. 2:16-cv-00445-RSL  
51598706

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3292  
PHONE (206) 447-4400 FAX (206) 447-9700

1 parties to file confidential information under seal.

2 2. “CONFIDENTIAL” MATERIAL

3 “Confidential” material shall include the following documents and tangible things  
4 produced or otherwise exchanged:

- 5 • Financial documents and records, including but not limited to tax records and  
6 statements, income statements, balance sheets, documentation of profits & losses,  
7 and payment records;
- 8 • Personal identifying information, including but not limited to social security  
9 numbers, dates of birth, and account numbers;
- 10 • Trust documents and records for the James D. and Jacqueline H. Gilmur Living  
11 Trust.

12 3. SCOPE

13 The protections conferred by this agreement cover not only confidential material (as  
14 defined above), but also (1) any information copied or extracted from confidential material; (2)  
15 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
16 conversations, or presentations by parties or their counsel that might reveal confidential material.  
17 However, the protections conferred by this agreement do not cover information that is in the  
18 public domain or becomes part of the public domain through trial or otherwise.

19 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
21 or produced by another party or by a non-party in connection with this case only for prosecuting,  
22 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
23 the categories of persons and under the conditions described in this agreement. Confidential  
24 material must be stored and maintained by a receiving party at a location and in a secure manner  
25 that ensures that access is limited to the persons authorized under this agreement.  
26

1           4.2    Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party, a receiving party may  
3 disclose any confidential material only to:

4           (a) the receiving party's counsel of record in this action, as well as employees of counsel  
5 to whom it is reasonably necessary to disclose the information for this litigation;

6           (b) the officers, directors, and employees (including in house counsel) of the receiving  
7 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a  
8 particular document or material produced is for Attorney's Eyes Only and is so designated;

9           (c) experts and consultants to whom disclosure is reasonably necessary for this litigation  
10 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11           (d) the court, court personnel, and court reporters and their staff;

12           (e) copy or imaging services retained by counsel to assist in the duplication of  
13 confidential material, provided that counsel for the party retaining the copy or imaging service  
14 instructs the service not to disclose any confidential material to third parties and to immediately  
15 return all originals and copies of any confidential material;

16           (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
17 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
18 A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
19 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
20 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
21 under this agreement;

22           (g) the author or recipient of a document containing the information or a custodian or  
23 other person who otherwise possessed or knew the information.

24           4.3    Filing Confidential Material. Before filing confidential material or discussing or  
25 referencing such material in court filings, the filing party shall confer with the designating party  
26

1 to determine whether the designating party will remove the confidential designation, whether the  
2 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
3 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
4 standards that will be applied when a party seeks permission from the court to file material under  
5 seal.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
8 or non-party that designates information or items for protection under this agreement must take  
9 care to limit any such designation to specific material that qualifies under the appropriate  
10 standards. The designating party must designate for protection only those parts of material,  
11 documents, items, or oral or written communications that qualify, so that other portions of the  
12 material, documents, items, or communications for which protection is not warranted are not  
13 swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
15 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
16 unnecessarily encumber or delay the case development process or to impose unnecessary  
17 expenses and burdens on other parties) expose the designating party to sanctions.

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

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
22 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
23 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
24 be clearly so designated before or when the material is disclosed or produced.

25 (a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition  
26

1 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the  
2 designating party must affix the word "CONFIDENTIAL" to each page that contains  
3 confidential material. If only a portion or portions of the material on a page qualifies for  
4 protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
5 making appropriate markings in the margins).

6 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties  
7 must identify on the record, during the deposition, hearing, or other proceeding, all protected  
8 testimony, without prejudice to their right to so designate other testimony after reviewing the  
9 transcript. Any party or non-party may, within fifteen days after receiving a deposition  
10 transcript, designate portions of the transcript, or exhibits thereto, as confidential.

11 (c) Other tangible items: the producing party must affix in a prominent place on the  
12 exterior of the container or containers in which the information or item is stored the word  
13 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
14 the producing party, to the extent practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
16 designate qualified information or items does not, standing alone, waive the designating party's  
17 right to secure protection under this agreement for such material. Upon timely correction of a  
18 designation, the receiving party must make reasonable efforts to ensure that the material is  
19 treated in accordance with the provisions of this agreement.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
22 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
24 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
25 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
26

1 original designation is disclosed.

2       6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
3 regarding confidential designations without court involvement. Any motion regarding  
4 confidential designations or for a protective order must include a certification, in the motion or in  
5 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
6 conference with other affected parties in an effort to resolve the dispute without court action. The  
7 certification must list the date, manner, and participants to the conference. A good faith effort to  
8 confer requires a face-to-face meeting or a telephone conference.

9       6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
10 intervention, the designating party may file and serve a motion to retain confidentiality under  
11 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
12 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
13 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
14 other parties) may expose the challenging party to sanctions. All parties shall continue to  
15 maintain the material in question as confidential until the court rules on the challenge.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
17 LITIGATION

18 If a party is served with a subpoena or a court order issued in other litigation that compels  
19 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
20 party must:

21       (a) promptly notify the designating party in writing and include a copy of the subpoena  
22 or court order;

23       (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
24 other litigation that some or all of the material covered by the subpoena or order is subject to this  
25 agreement. Such notification shall include a copy of this agreement; and

26       (c) cooperate with respect to all reasonable procedures sought to be pursued by the

1 designating party whose confidential material may be affected.

2 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
4 material to any person or in any circumstance not authorized under this agreement, the receiving  
5 party must immediately (a) notify in writing the designating party of the unauthorized  
6 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
7 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
8 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
9 Agreement to Be Bound" that is attached hereto as Exhibit A.

10 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
11 MATERIAL

12 When a producing party gives notice to receiving parties that certain inadvertently  
13 produced material is subject to a claim of privilege or other protection, the obligations of the  
14 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
15 provision is not intended to modify whatever procedure may be established in an e-discovery  
16 order or agreement that provides for production without prior privilege review. Parties shall  
17 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

18 10. NON TERMINATION AND RETURN OF DOCUMENTS

19 Within 60 days after the termination of this action, including all appeals, each receiving  
20 party must return all confidential material to the producing party, including all copies, extracts  
21 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
22 destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
25 work product, even if such materials contain confidential material.

26 The confidentiality obligations imposed by this agreement shall remain in effect until a

1 designating party agrees otherwise in writing or a court orders otherwise.

2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3 DATED this 22<sup>nd</sup> day of May, 2017.

4 FOSTER PEPPER PLLC

SMITH & LOWNEY, PLLC

5 s/ Lori A. Terry

s/ Knoll Lowney

6 Lori A. Terry, WSBA #22006

Knoll Lowney, WSBA #23457

7 Foster Pepper PLLC

Meredith A. Crafton, WSBA #46558

8 1111 Third Avenue, Suite 3000

SMITH & LOWNEY, PLLC

9 Seattle, WA 98101

2317 E. John St.

10 Telephone: (206) 447-4400

Seattle, WA 98112

11 Facsimile: (206) 447-9700

Telephone: (206) 860-2883

12 E-Mail: [lori.terry@foster.com](mailto:lori.terry@foster.com)

Facsimile: (206) 860-4187

13 *Attorney for Defendants Duwamish Marine*

E-Mail: [knoll@smithandlowney.com](mailto:knoll@smithandlowney.com)

14 *Center, Inc., Jacqueline H. Gilmur, James D.*

[meredith@smithandlowney.com](mailto:meredith@smithandlowney.com)

15 *Gilmur, James D. and Jacqueline H. Gilmur*

*Attorneys for Plaintiff Puget Soundkeeper*

16 *Living Trust, and Duwamish Metal Fab, Inc.*

*Alliance*

17 WILLIAMS, KASTNER & GIBBS PLLC

18 s/ Mark Myers

19 Mark Myers, WSBA #15362

20 S. Shawn Toor, WSBA #50108

21 WILLIAMS, KASTNER & GIBBS PLLC

22 601 Union Street, Suite 4100

23 Seattle, WA 98101

24 Telephone: (206) 628-6600

25 Facsimile: (206) 628-6611

26 E-Mail: [mmyers@williamskastner.com](mailto:mmyers@williamskastner.com)

[stoor@williamskastner.com](mailto:stoor@williamskastner.com)

*Attorneys for Defendant Samson Tug and*  
*Barge*

27 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

28 DATED: May 23, 2017

Robert S. Lasnik

Robert S. Lasnik  
United States District Judge

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FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3292  
PHONE (206) 447-4400 FAX (206) 447-9700



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, \_\_\_\_\_ [print or type full name],  
 2 of \_\_\_\_\_ [print or type full address], declare  
 3 under penalty of perjury that I have read in its entirety and understand the Stipulated  
 4 Protective Order that was issued by the United States District Court for the Western District of  
 5 Washington on \_\_\_\_\_ [date] in the case of PUGET SOUNDKEEPER  
 6 ALLIANCE v. SAMSON TUG AND BARGE CO. INC., et al. No. 2:16-cv-00445-RSL. I agree  
 7 to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
 8 understand and acknowledge that failure to so comply could expose me to sanctions and  
 9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
 10 manner any information or item that is subject to this Stipulated Protective Order to any person  
 11 or entity except in strict compliance with the provisions of this Order.  
 12

13  
 14 I further agree to submit to the jurisdiction of the United States District Court for the  
 15 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
 16 Protective Order, even if such enforcement proceedings occur after termination of this action.  
 17

18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20 Printed name: \_\_\_\_\_

21 Signature: \_\_\_\_\_