

1 HONORABLE THOMAS S. ZILLY  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

v.

ACE METAL CORPORATION,

Defendant.

NO. 2:17-cv-00524-TSZ

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action involves 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 parties to file confidential information under seal.

PROTECTIVE ORDER -1  
(2:17-cv-00524-TSZ)

**GORDON & REES LLP**  
701 5th Avenue, Suite 2100  
Seattle, WA 98104  
Telephone: (206) 695-5111  
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1 2. “CONFIDENTIAL” MATERIAL

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

- 4 A. Ace Metal Corporation’s Evaluation Report from its CPA dated 9.29.2016
- 5 B. Ace Metal Corporation’s Asset List
- 6 C. Ace Metal Corporation’s Total Asset Value
- 7 D. Ace Metal Corporation’s Profit and Loss Statements for the year ending  
8 December 31, 2011, December 31, 2012, December 31, 2013, December 31,  
9 2014, December 31, 2015, December 31, 2016, December 31, 2017
- 10 E. Ace Metal Corporation’s Financial statements for 2013, 2014 and 2015
- 11 F. Ace Metal Corporation’s Balance Sheet for 2014
- 12 G. Ace Metal Corporation’s Income Statement for 2014
- 13 H. Ace Metal Corporation’s Tax Returns for 2011, 2012, 2013, 2014, 2015, and  
14 2016

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential material (as  
17 defined above), but also (1) any information copied or extracted from confidential material; (2)  
18 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
19 conversations, or presentations by parties or their counsel that might reveal confidential material.

20 However, the protections conferred by this agreement do not cover information that is in  
21 the public domain or becomes part of the public domain through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
24 or produced by another party or by a non-party in connection with this case only for prosecuting,  
25 defending, or attempting to settle this litigation. Confidential material may be disclosed only to

1 the categories of persons and under the conditions described in this agreement. Confidential  
2 material must be stored and maintained by a receiving party at a location and in a secure manner  
3 that ensures that access is limited to the persons authorized under this agreement.

4       4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
5 ordered by the court or permitted in writing by the designating party, a receiving party may  
6 disclose any confidential material only to:

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

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

13               (c)    experts and consultants to whom disclosure is reasonably necessary for  
14 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
15 A);

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

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

21               (f)    during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
25

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
2 under this agreement;

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

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
6 referencing such material in court filings, the filing party shall confer with the designating party  
7 to determine whether the designating party will remove the confidential designation, whether the  
8 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
9 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
10 standards that will be applied when a party seeks permission from the court to file material under  
11 seal.

12 5. DESIGNATING PROTECTED MATERIAL

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

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

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

4        5.2    Manner and Timing of Designations. Except as otherwise provided in this  
5 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
7 be clearly so designated before or when the material is disclosed or produced.

8                (a)    Information in documentary form: (*e.g.*, paper or electronic documents  
9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
10 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
11 contains confidential material. If only a portion or portions of the material on a page qualifies for  
12 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
13 making appropriate markings in the margins).

14                (b)    Testimony given in deposition or in other pretrial proceedings: the parties  
15 and any participating non-parties must identify on the record, during the deposition or other  
16 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
17 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
18 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
19 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
20 confidential information at trial, the issue should be addressed during the pre-trial conference.

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

1       5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is  
5 treated in accordance with the provisions of this agreement.

6       6.      CHALLENGING CONFIDENTIALITY DESIGNATIONS

7       6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
14 regarding confidential designations without court involvement. Any motion regarding  
15 confidential designations or for a protective order must include a certification, in the motion or in  
16 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
17 conference with other affected parties in an effort to resolve the dispute without court action. The  
18 certification must list the date, manner, and participants to the conference. A good faith effort to  
19 confer requires a face-to-face meeting or a telephone conference.

20       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
21 intervention, the designating party may file and serve a motion to retain confidentiality under  
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
24 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall continue to  
2 maintain the material in question as confidential until the court rules on the challenge.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
4 **LITIGATION**

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

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

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

13 (c) cooperate with respect to all reasonable procedures sought to be pursued  
14 by the designating party whose confidential material may be affected.

15 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

23 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
24 **MATERIAL**

1        When a producing party gives notice to receiving parties that certain inadvertently  
2 produced material is subject to a claim of privilege or other protection, the obligations of the  
3 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
4 provision is not intended to modify whatever procedure may be established in an e-discovery  
5 order or agreement that provides for production without prior privilege review. The parties  
6 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

7        **10. NON TERMINATION AND RETURN OF DOCUMENTS**

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

12        Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
13 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
14 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
15 work product, even if such materials contain confidential material.

16        The confidentiality obligations imposed by this agreement shall remain in effect until a  
17 designating party agrees otherwise in writing or a court orders otherwise.

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26        PROTECTIVE ORDER -8  
(2:17-cv-00524-TSZ)

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: September 19, 2017

3 By: */s/ Alyssa Englebrecht*  
4 Alyssa Englebrecht, WSBA #46773  
5 2317 E. John St.  
6 Seattle, WA 98112  
7 Phone: (206)860-2883  
8 Fax: (206) 860-4187  
9 Email: alyssa@smithandlowney.com  
10 Attorneys for Plaintiff

11 DATED: September 19, 2017

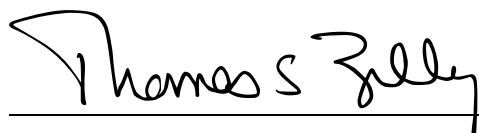
12 By: */s/ Elizabeth K. Morrison*  
13 Elizabeth K. Morrison, WSBA #43042  
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21 Attorneys for Defendant Ace Metal  
22 Corporation

23 The parties' joint motion for entry of stipulated protective order, docket no. 13, is  
24 GRANTED; and

25 PURSUANT TO STIPULATION, IT IS SO ORDERED

26 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
1 documents in this proceeding shall not, for the purposes of this proceeding or any other  
2 proceeding in any other court, constitute a waiver by the producing party of any privilege  
3 applicable to those documents, including the attorney-client privilege, attorney work-product  
4 protection, or any other privilege or protection recognized by law.

DATED this 20th day of September, 2017.



27 Thomas S. Zilly  
28 United States District Judge

29 PROTECTIVE ORDER -9  
30 (2:17-cv-00524-TSZ)

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**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on \_\_\_\_\_ [date] in the case of ***Puget Soundkeeper Alliance v. Ace Metal Corporation***. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date:

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

Printed name:

Signature:

**PROTECTIVE ORDER -10**  
(2:17-cv-00524-TSZ)

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