

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELLIOT KREMERMAN,  
Plaintiff,  
v.  
OPEN SOURCE STEEL, LLC, et al.,  
Defendants.

Case No. 2:17-cv-953-BAT

**STIPULATED PROTECTIVE ORDER**

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 parties to file confidential information under seal.

2. CONFIDENTIAL MATERIAL

2.1 “CONFIDENTIAL” material may include, but is not limited to, the following documents and tangible things produced or otherwise exchanged:

- Supplier or manufacturer lists of plaintiff, defendants, and any of their businesses;

- Proprietary or non-public information regarding composition, formula, and manufacturing specifications of the products marketed and sold by plaintiff, defendants, and any of their businesses.

2.2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material shall include extremely sensitive confidential information or items, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means, and may include but are not limited to:

- Sensitive, highly proprietary, or trade secret company information, including financial information of the plaintiff, defendants, and any of their businesses (including, but not limited to, profits, losses, costs, and sales figures);
- Customer lists of the plaintiff, defendants, and any of their businesses.

### 3. SCOPE

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

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

### 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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

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

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

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

9                   (c)    experts and consultants to whom disclosure is reasonably necessary for this  
10 litigation 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  
17 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
18 (Exhibit 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 be  
20 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  
23 custodian or other person who otherwise possessed or knew the information.

24           4.3    Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
25 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
26 designating party, a receiving party may disclose information designated “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

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

5 (c) the court, court personnel, and court reporters and their staff;

6 (d) copy or imaging services retained by counsel to assist in the duplication of  
7 confidential material, provided that counsel for the party retaining the copy or imaging service  
8 instructs the service not to disclose any confidential material to third parties and to immediately  
9 return all originals and copies of any confidential material;

10 (e) party witnesses (during depositions or trial) of the designating party; pages  
11 of transcribed deposition testimony or exhibits to depositions that reveal highly confidential  
12 material must be separately bound by the court reporter and may not be disclosed to anyone except  
13 as permitted under this agreement;

14 (f) the author or recipient of a document containing the information or a  
15 custodian or other person who otherwise possessed or knew the information.

16 4.4 Filing Confidential Material. Before filing confidential material or discussing or  
17 referencing such material in court filings, the filing party shall confer with the designating party to  
18 determine whether the designating party will remove the confidential designation, whether the  
19 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
20 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards  
21 that will be applied when a party seeks permission from the court to file material under seal.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or  
24 non-party that designates information or items for protection under this agreement must take care  
25 to limit any such designation to specific material that qualifies under the appropriate standards. The  
26 designating party must designate for protection only those parts of material, documents, items, or  
27 oral or written communications that qualify, so that other portions of the material, documents, items,

1 or communications for which protection is not warranted are not swept unjustifiably within the  
2 ambit of this agreement.

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement  
11 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
12 disclosure or discovery material that qualifies for protection under this agreement must be clearly  
13 so designated before or when the material is disclosed or produced.

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

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

1 (c) Other tangible items: the producing party must affix in a prominent place on  
2 the exterior of the container or containers in which the information or item is stored the word  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a  
4 portion or portions of the information or item warrant protection, the producing party, to the extent  
5 practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
7 designate qualified information or items does not, standing alone, waive the designating party’s  
8 right to secure protection under this agreement for such material. Upon timely correction of a  
9 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
10 in accordance with the provisions of this agreement.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

25 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
26 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
27 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion

1 in any such motion shall be on the designating party. Frivolous challenges, and those made for an  
2 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties)  
3 may expose the challenging party to sanctions. All parties shall continue to maintain the material  
4 in question as confidential until the court rules on the challenge.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
6 LITIGATION

7 If a party is served with a subpoena or a court order issued in other litigation that compels  
8 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that party must:

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

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

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

17 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

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

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

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

17 The confidentiality 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 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: August 21, 2017

DATED: August 21, 2017

3 /s/ Stephen E. Morrissey  
4 Stephen E. Morrissey  
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*Attorneys for Defendants Open Source  
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Dellay*

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

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

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23 **DATED:** August 25, 2017.

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26 BRIAN A. TSUCHIDA  
27 United States Magistrate Judge

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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  
\_\_\_\_\_ in the case of *Kremerman v. Open Source Steel, LLC, et al*, 2:17-CV-  
00953-BAT. 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: \_\_\_\_\_