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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC LANDSCAPE MANAGEMENT,
INC., a Washington corporation,

Plaintiff,

v.

PACIFIC LANDSCAPE MANAGEMENT,
LLC, an Oregon limited liability company,

Defendant.

Case No. 2:23-cv-01005-JHC

STIPULATED PROTECTIVE ORDER¹

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.

¹ The Court has revised the parties' proposed order as indicated below.

1 2. DEFINITIONS

2 2.1 “CONFIDENTIAL” shall include the following information: all information of the
3 nature deemed personally identifiable information and requiring redaction by this Court’s LCR
4 5.2; health and medical information; non-public financial records; any party’s internal policies and
5 practices, including training practices and procedures; any party’s proprietary business
6 information, including client information, training information, and non-public technical
7 information pertaining to the producing party’s goods or services; any party’s contracts,
8 communications, and agreements with persons and entities other than exclusively with the
9 receiving party; ~~and any party’s employee information; and any other documents that the receiving~~
10 ~~party agrees in writing should be designated Confidential and that is not publicly available.~~
11 Notwithstanding the foregoing, by agreeing to this Stipulation, no party or third party waives the
12 right to challenge any designating party’s designation of any Document or information as
13 “Confidential.” Confidential information shall not include any information that, prior to production
14 under the terms of this Stipulated Protective Order, was properly in the possession or knowledge
15 of the receiving party or was already public knowledge through no act or omission of the receiving
16 party. The restrictions contained in this Stipulated Protective Order shall not apply to information
17 that is, or after disclosure becomes, public knowledge other than by an act or omission of the
18 receiving party, or that is legitimately acquired from a source not subject to this Stipulated
19 Protective Order.

20 2.2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall mean any
21 document or information satisfying the requirements set forth in Paragraph 2.1, and which the
22 designating party or third party believes in good faith includes highly confidential information the
23 unrestricted disclosure of which could cause significant, irreparable injury to the designating party
24 that cannot be avoided by less restrictive means. Specifically, the “Highly Confidential –
25 Attorneys' Eyes Only” designation shall apply only to (1) highly sensitive technical information,
26 including current research, development and manufacturing information; (2) a party’s highly

1 sensitive financial information; (3) competitive technical information, including technical analyses
2 or comparisons of a competitor's products or services; (4) competitive business information,
3 including non-public financial and marketing analyses, and strategic product/service expansion
4 plans; (5) personal health or medical information; and (6) an individual's personal credit, banking
5 or other financial information; ~~or (7) any other commercially sensitive information the disclosure~~
6 ~~of which to non-qualified persons subject to this Order the producing party reasonably and in good~~
7 ~~faith believes would likely cause harm and which the receiving party agrees in writing qualifies~~
8 ~~for such designation.~~ Notwithstanding the foregoing, by agreeing to this Stipulation, unless
9 otherwise agreed elsewhere, no party or third party waives the right to challenge any designating
10 party's designation of any document as "Highly Confidential – Attorneys' Eyes Only.

11 2.3 "Protected Material" shall mean any disclosure or discovery material that is
12 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
13 ONLY."

14 3. SCOPE

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

19 However, the protections conferred by this Protective Order do not cover information that
20 is in the public domain or becomes part of the public domain through trial or otherwise. Any use
21 of Protected Material at trial shall be governed by a separate agreement or order.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use Protected Material that is disclosed or
24 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. Such Protected Material may be disclosed only to
26 the categories of persons and under the conditions described in this Protective Order. Protected

1 Material must be stored and maintained by a receiving party at a location and in a secure manner
2 that ensures that access is limited to the persons authorized under this Protective Order.

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

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

8 (b) the officers, directors, and employees (including in house counsel) of the
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless such
10 disclosure is barred by Paragraph 4.3 below;;

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

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

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

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

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

26 4.3 Disclosure of Materials Designated as HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY. Unless otherwise ordered by the court or permitted in writing by
2 the designating party, a receiving party may not disclose any "HIGHLY CONFIDENTIAL –
3 ATTORNEYS' EYES ONLY" designated material to the individuals identified above in Section
4 4.2(b).

5 4.4 Filing Protected Material. Before filing Protected Material or discussing or
6 referencing such material in court filings, the filing party shall confer with the designating party,
7 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
8 remove the Confidential or Highly Confidential – Attorneys' Eyes Only designation, whether the
9 document can be redacted, or whether a motion to seal or stipulation and proposed order is
10 warranted. During the meet and confer process, the designating party must identify the basis for
11 sealing the specific confidential information at issue, and the filing party shall include this basis in
12 its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule
13 5(g) sets forth the procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal. A party who seeks to maintain
15 the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
16 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
17 the motion to seal being denied, in accordance with the strong presumption of public access to the
18 Court's files.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
21 or non-party that designates information or items for protection under this Stipulated Protective
22 Order must take care to limit any such designation to specific material that qualifies under the
23 appropriate standards. The designating party must designate for protection only those parts of
24 material, documents, items, or oral or written communications that qualify, so that other portions
25 of the material, documents, items, or communications for which protection is not warranted are
26 not swept unjustifiably within the ambit of this agreement.

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

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (*see, e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must
11 be clearly so designated before or when the material is disclosed or produced.

12
13 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
14 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
15 the designating party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a portion or
17 portions of the material on a page qualifies for protection, the producing party also must clearly
18 identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins). With
19 respect to all designated materials produced with an associated load file, the producing Party will
20 include the appropriate designation in the load file. With respect to all designated digital files
21 produced in native format, the producing Party will include the appropriate designation in the
22 filename or cover sheet. If the partial designation of any page is unreasonably cumbersome, the
23 designating party may designate the entire page "CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as reasonably appropriate.

25 (b) Testimony given in deposition or in other pretrial proceedings: The parties
26 and any participating non-parties must identify on the record, during the deposition or other pretrial

1 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
2 after reviewing the transcript. Any party or non-party may, within thirty days after receiving the
3 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
4 exhibits thereto, as Protected Material. If a party or non-party desires to protect confidential
5 information at trial, the issue should be addressed during the pre-trial conference.

6 (c) Other tangible items: The producing party must affix in a prominent place
7 on the exterior of the container or containers in which the information or item is stored the word
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a
9 portion or portions of the information or item warrant protection, the producing party, to the extent
10 practicable, shall identify the protected portion(s) and specify the level of protection being
11 asserted.

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate Protected Material does not, standing alone, waive the designating party’s right to secure
14 protection under this Stipulated Protective Order for such material. Upon timely notice of a failure
15 to designate or improper designation, the receiving party must make reasonable efforts to ensure
16 that the material is treated in accordance with the provisions of this Stipulated Protective Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
21 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
25 regarding confidential designations without court involvement. Any motion regarding
26 confidential designations or for a protective order must include a certification, in the motion or in

1 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
2 with other affected parties in an effort to resolve the dispute without court action. The certification
3 must list the date, manner, and participants to the conference. A good-faith effort to confer requires
4 a face-to-face meeting or a telephone conference.

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

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

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

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

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

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

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
26 material to any person or in any circumstance not authorized under this agreement, the receiving

1 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
2 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
3 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
4 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
5 Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

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

14 10. NON-TERMINATION AND RETURN OF DOCUMENTS

15 Within sixty (60) days after the termination of this action, including all appeals, each
16 receiving party must return all confidential material to the producing party, including all copies,
17 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
18 destruction.

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

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

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: July 8, 2024

ELLIS, LI & McKINSTRY PLLC

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6 By s/Kyle D. Netterfield

Kyle D. Netterfield, WSBA No. 27101
1700 Seventh Avenue, Suite 1810
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9 Attorneys for Plaintiff Pacific Landscape
10 Management, Inc.

11 DATED: July 8, 2024

CHRISTENSEN O'CONNOR JOHNSON
KINDNESS, PLLC

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13 By s/John Whitaker

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18 Attorneys for Defendant Pacific Landscape
19 Management, LLC

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2 PURSUANT TO STIPULATION, IT IS SO ORDERED

3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
4 documents, electronically stored information (ESI) or information, whether inadvertent or
5 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
6 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
7 documents, including the attorney-client privilege, attorney work-product protection, or any other
8 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
9 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
10 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
11 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
12 segregation of privileged and/or protected information before production. Information produced
13 in discovery that is protected as privileged or work product shall be immediately returned to the
14 producing party.

15
16 DATED: July 8, 2024.

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19 _____
20 JOHN H. CHUN
21 UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *Pacific Landscape Management, Inc. v. Pacific Landscape Management, LLC*, No.
8 2:23-cv-01005. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
11 any manner any information or item that is subject to this Stipulated Protective Order to any person
12 or entity except in strict compliance with the provisions of this Order.

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

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____

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