

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

POC USA, LLC,

Plaintiff,

v.

EXPEDITORS INTERNATIONAL OF
WASHINGTON, INC.,

Defendant.

NO. 2:23-cv-01816-RSM

**STIPULATED PROTECTIVE
ORDER**

NOTE ON MOTION CALENDAR:
May 29, 2024

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information (referred to collectively herein as “confidential material”) 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 2. CONFIDENTIAL MATERIAL

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

4 (a) employee personnel files, personal financial information, and personally identifiable
5 information;

6 (b) proprietary company management information, financial data, strategic planning
7 documents, information regarding business services, information governance and related
8 technology and infrastructure, cybersecurity systems and response planning, and investigation of
9 and response to the cyberattack at issue, which information has not been publicly disclosed and in
10 the hands of competitors or threat actors would be valuable;

11 (c) customer, vendor and partner information and contractual terms that have been
12 maintained as confidential and not been publicly disclosed; and

13 (d) information that is protected from disclosure under FRCP 26(c)(1)(G) or otherwise by
14 law or pursuant to a written non-disclosure or confidentiality agreement.

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) all
18 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 the
26 categories of persons and under the conditions described in this agreement. Confidential material

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

3 4.2 Disclosure of Information or Items Designated “CONFIDENTIAL” or
4 “ATTORNEYS’ EYES ONLY”. Unless otherwise ordered by the court or permitted in writing by
5 the designating party, a receiving party may disclose any material designated “CONFIDENTIAL”
6 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;

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, and any
14 mediator either agreed upon by the parties or ordered by the court, and their staff;

15 (e) copy or imaging or e-discovery or other vendor services retained by counsel
16 to assist with handling of confidential material, provided that counsel for the party retaining the
17 service instructs the service not to disclose any confidential material to third parties and, to the
18 extent applicable, to immediately return all originals and copies of any confidential material;

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

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

1 (h) any other person or entity to which the parties agree in writing.

2 If a particular document or material produced is for Attorneys' Eyes Only and is so designated by
3 the designating party by affixing the words "ATTORNEYS' EYES ONLY" to each page or
4 portion of a page or set of information that contains such material, and unless otherwise ordered
5 by the court or permitted in writing by the designating party, a receiving party may disclose any
6 material designated "ATTORNEYS' EYES ONLY" only to the individuals listed in subsections
7 (a) and (c) through (h).

8 4.3 Filing Confidential Material. Before filing confidential material or discussing or
9 referencing such material in court filings, the filing party shall confer with the designating party,
10 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
11 remove the confidential designation, whether the document can be redacted, or whether a motion
12 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
13 designating party must identify the basis for sealing the specific confidential information at issue,
14 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
15 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
16 the standards that will be applied when a party seeks permission from the court to file material
17 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
18 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
19 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
20 the strong presumption of public access to the Court's files.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
23 or non-party that designates information or items for protection under this agreement must take
24 care to limit any such designation to specific material that qualifies under the appropriate
25 standards. The designating party must designate for protection only those parts of material,
26 documents, items, or oral or written communications that qualify, so that other portions of the

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

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
6 and burdens 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
11 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
13 be clearly 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" or "ATTORNEYS' EYES ONLY"
17 to each page that contains confidential material. If only a portion or portions of the material on a
18 page qualifies for protection, the producing party also must clearly identify the protected portion(s)
19 (*e.g.*, by making appropriate 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" or "ATTORNEYS' EYES ONLY". If a party or non-party
26 desires to protect confidential information at trial, the issue should be addressed during the pre-

1 trial conference.

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

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

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court

1 intervention, the designating party may file and serve a motion to retain confidentiality under Local
2 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
3 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
4 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
5 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
6 the material in question consistent with its confidentiality designation until the court rules on the
7 challenge.

8 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
9 LITIGATION

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

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

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

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

20 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 Bound” that is attached hereto as Exhibit A.

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

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

10 10. NON TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of this action, including all appeals, each receiving
12 party must return to the producing party, or securely destroy and provide counsel’s certification of
13 destruction to the producing party, all confidential material, including all copies, extracts and
14 summaries thereof.

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

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

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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1 DATED: May 29, 2024.

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25 *Attorneys for Defendant*
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1 **ORDER**

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.

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16 DATED: June 4, 2024

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19 RICARDO S. MARTINEZ
20 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 *POC USA, LLC v. Expeditors International of Washington, Inc.*, No. 2:23-cv-01816-RSM.
8 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 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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