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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 RADIATOR EXPRESS WAREHOUSE,  
11 INC., d/b/a 1-800-RADIATOR,

12 Plaintiff,

13 v.

14 PERFORMANCE RADIATOR PACIFIC,  
15 LLC, and PERFORMANCE CONTAINER  
16 CO., LLC,

17 Defendants.

Case No. C09-5691RJB

ORDER ON AGREED  
MOTION FOR  
PROTECTIVE ORDER

18 On April 29, 2010, the court received a proposed Agreed Protective Order, which the court has  
19 considered to be a joint motion for a protective order. Dkts. 33, 33-2.

20 **Proposed Protective Order.** The parties request that two broad categories of information be  
21 protected; "Confidential Material" and "Attorney's Eyes Only Material." Dkt. 33-2. Confidential  
22 material is defined by the parties as "non-public, proprietary information that the disclosing party and its  
23 counsel reasonably believe is sensitive, but not so sensitive as to require protection [as Attorney's Eyes  
24 Only material], whether embodied in physical objects, documents, or the factual knowledge of persons."  
25 Dkt. 33-2, ¶ 3. Attorney's Eyes Only material is defined by the parties as material consisting of  
26 "information that the disclosing party and its counsel believe in good faith contains proprietary  
27 information (in document form or otherwise), including but not limited to material constituting or  
28 containing trade secrets or other confidential research, development, financial, or commercial

1 information, that the disclosing party reasonably believes is of such a nature and character that unlimited  
 2 disclosure of such information to the receiving party will be harmful to the disclosing party or to its  
 3 business or will provide the receiving party a competitive advantage over the disclosing party.” Dkt. 33-  
 4 2, ¶ 2.

5 The parties have also set forth in detail the procedure for disclosure and disposition of information  
 6 covered by the protective order (Dkt. 33-2). In addition, the proposed protective order provides in part  
 7 that “each individual who receives any Confidential material or Attorney’s Eyes Only material shall be  
 8 subject to the jurisdiction of this Court for the purpose of any proceedings relating to the performance  
 9 under, compliance with or violation of this Protective Order.” (Dkt. 33-2, ¶ 10); if a designation of  
 10 information is challenged, the “burden of proving that information has been properly designated is on the  
 11 party making such designation.” (Dkt. 33-2, ¶ 13); “Documents containing Confidential material or  
 12 Attorney’s Eyes Only material of any party shall not be filed with the Court unless it is necessary to do so  
 13 for purposes of trial, motions, or other Court matters.” (Dkt. 33-2, ¶ 14); when a motion to seal is filed  
 14 with the Court “The party filing the motion to seal need not provide argument or authority in support of  
 15 the motion.” (Dkt. 33-2, ¶ 15); and “the terms, conditions, and limitations of this Order shall survive the  
 16 termination of this action.” (Dkt. 33-2, ¶ 23).

17  
 18 **Legal Standard.** Fed.R.Civ.P. 26(c) provides as follows:

19 **(c) Protective Orders.**

20 **(1) In General.** A party or any person from whom discovery is sought may move for a protective  
 21 order in the court where the action is pending--or as an alternative on matters relating to a  
 22 deposition, in the court for the district where the deposition will be taken. The motion must  
 23 include a certification that the movant has in good faith conferred or attempted to confer with  
 other affected parties in an effort to resolve the dispute without court action. The court may, for  
 good cause, issue an order to protect a party or person from annoyance, embarrassment,  
 oppression, or undue burden or expense, including one or more of the following:

- 24 (A) forbidding the disclosure or discovery;
- 25 (B) specifying terms, including time and place, for the disclosure or discovery;
- 26 (C) prescribing a discovery method other than the one selected by the party seeking  
discovery;
- 27 (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or  
discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- 28 (G) requiring that a trade secret or other confidential research, development, or  
commercial information not be revealed or be revealed only in a specified way; and

1 (H) requiring that the parties simultaneously file specified documents or information in  
2 sealed envelopes, to be opened as the court directs.

3 (2) **Ordering Discovery.** If a motion for a protective order is wholly or partly denied, the court  
4 may, on just terms, order that any party or person provide or permit discovery.

5 (3) **Awarding Expenses.** Rule 37(a)(5) applies to the award of expenses.

6 **Court Involvement in Discovery.** Federal Rules of Civil Procedure 26 through 36 are designed  
7 to guide the parties through the discovery process. The parties should enlist the court to assist them only  
8 when necessary. The court may issue protective orders if the parties show good cause. However, a  
9 protective order should not be used to involve the court in the discovery process, except under narrow  
10 circumstances. A protective order should not be used to rubber stamp a procedure that the parties have  
11 developed for disclosing documents and disposing of those documents; parties should easily be able to  
12 agree among themselves on the procedures they will follow during discovery. This proposed protective  
13 order, purporting to be an order governing how discovery is to proceed with regard to sensitive  
14 information, is unnecessary and inappropriate.

15 **Documents to be Protected.** It is also inappropriate for the court to “protect” broad classes of  
16 documents, without compelling justification. There are instances when a document, or a narrow class of  
17 documents, may warrant an order of the court to protect those documents from further disclosure, for  
18 example, medical records protected under HIPAA regulations. However, a request to protect any such  
19 documents must clearly identify the document or class of documents, and set forth the reason that the  
20 court’s intervention is necessary to protect those documents from further disclosure. This proposed  
21 protective order identifies broad classes of documents, not specific documents or narrow classes of  
22 documents; and, further, does not provide a reason why such documents should be protected.

23 Further, for the vast majority of documents involved in the discovery process, the parties should  
24 be able to agree on the conditions of disclosure and the documents to be produced. The court not be  
25 unnecessarily involved in the discovery process.

26 **Filing Documents with the Court.** It is unnecessary for the court to issue a protective order  
27 governing filing of documents with the court. Counsel may pursue appropriate remedies with regard to  
28 sensitive information, including sealing under Local Rule CR5(g); filing motions *in limine*; and  
employing motions or objections at trial.

