

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CERTAINTEED CORPORATION,

Plaintiff,

v.

SEATTLE ROOF BROKERS, et al.,

Defendants.

CASE NO. C09-563RAJ

ORDER

This matter comes before the court Plaintiff's motion (Dkt. # 19) for a protective order. For the reasons stated herein, the court DENIES the motion.

Plaintiff Certainteed Corporation has sued a collection of business enterprises that Defendant James Garcia operates. The suit asserts a variety of claims arising from Mr. Garcia's alleged misrepresentations about the quality and performance of Certainteed roofing materials. Mr. Garcia does not have an attorney.

Certainteed asked Mr. Garcia to agree to a "protective order" to govern the exchange of documents and other aspects of discovery. In essence, the order would permit any party to designate documents or deposition testimony as "confidential," which would in turn subject the documents to a host of restrictions.

Although he has no lawyer, Mr. Garcia was able to capture the essence of why many judges in this District decline to enter such "protective orders," even when the parties consent. Fed. R. Civ. P. 26(c) provides a court with authority to enter protective orders. An examination of Rule 26, however, shows that a protective order is not a

ORDER – 1

1 blanket order applying to all discovery, but rather a tool that applies to specific discovery  
2 that is objectionable for one or more reasons. For that reason, both this court and other  
3 courts in this District often decline to sign such orders. Parties are encouraged to come to  
4 reasonable agreements to help streamline discovery, but those agreements are not  
5 properly converted to orders of the court.

6 The court further observes that several pro se parties who have appeared before it  
7 have been understandably perplexed by the lengthy proposed protective orders that  
8 opposing counsel foist upon them. Those orders are typically written by lawyers for  
9 lawyers, using language that often obscures their purpose even to this court, and likely  
10 much more so to a non-attorney. Certainteed would have been well advised to negotiate  
11 a simple protective order with Mr. Garcia, one upon which he could have made an  
12 informed decision. Instead, it insisted upon a 20-clause, 8-page order. Mr. Garcia  
13 ultimately declined to agree because he felt he was not qualified to interpret the language.  
14 Mr. Garcia is to be applauded for declining to sign something he did not understand.

15 The court will not force Mr. Garcia to sign a document he does not understand.  
16 Instead, the court rules as follows:

- 17 1) Any party may designate any document that they produce in discovery as  
18 “confidential.” They shall do so by clearly marking the document with the  
19 word “CONFIDENTIAL” in its upper margin. Documents appropriate for  
20 such a designation may include, but are not limited to, personnel records, non-  
21 public criminal history information, and medical records. Portions of  
22 deposition transcripts may be designated “CONFIDENTIAL” as well.  
23 Nothing, however, shall be designated “CONFIDENTIAL” unless the party  
24 believes in good faith that it could be filed under seal under the standards  
25 stated in Local Rules W.D. Wash. CR 5(g).
- 26 2) No party may reveal a document designated “CONFIDENTIAL” to anyone  
27 other than their counsel, counsel’s staff, or expert witnesses. The parties are

1 free to agree with each other that one or more specific confidential documents  
2 may be viewed by someone else, if appropriate.

- 3 3) At the conclusion of this litigation, any party in possession of another party's  
4 "CONFIDENTIAL" documents shall either destroy them or return them to the  
5 producing party.
- 6 4) No party shall submit to the court a document designated "CONFIDENTIAL"  
7 by the other party in connection with a pleading, motion, or other filing,  
8 without first attempting to obtain the other party's permission. If the party  
9 does not grant permission, then the other party must file a motion to seal the  
10 document in accordance with Local Rules W.D. Wash. CR 5(g). The party  
11 who designated the document "CONFIDENTIAL" shall state the reasons for  
12 keeping the document under seal in response to the motion to seal.
- 13 5) If, in conjunction with resolving a motion to seal or in any other manner, the  
14 court finds that a party has unreasonably designated a document  
15 "CONFIDENTIAL" or unreasonably refused to remove the  
16 "CONFIDENTIAL" designation upon the other party's request, the court will  
17 impose monetary sanctions. Far too many commercial enterprises mistakenly  
18 believe that every document they produce in discovery is "confidential."  
19 Certainteed shall not make that mistake.

20 The court accordingly DENIES Certainteed's motion for a protective order (Dkt.  
21 # 19), subject to the conditions stated above.

22 DATED this 18th day of December, 2009.

23  
24 

25 The Honorable Richard A. Jones  
26 United States District Judge