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 19 MATERIALS

20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**

22 ENGINEERED FLOORS, LLC

23 Plaintiff(s),

24 v.

25 LAKESHORE EQUIPMENT
 26 COMPANY,

27 Defendant(s).

Case No:
 2:21-CV-02078-JAK-DFM

**ORDER GRANTING STIPULATED
 PROTECTIVE ORDER**

1 For good cause shown, the Court hereby enters the following Protective
2 Order, which has been stipulated to between the parties in the above-referenced
3 matter:

4 **I. PURPOSES AND LIMITATIONS**

5 A. Discovery in this action is likely to involve production of confidential,
6 proprietary, or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation may
8 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
9 enter the following Stipulated Protective Order. The parties acknowledge that this
10 Order does not confer blanket protections on all disclosures or responses to
11 discovery and that the protection it affords from public disclosure and use extends
12 only to the limited information or items that are entitled to confidential treatment
13 under the applicable legal principles. The parties further acknowledge, as set forth
14 in Section XIII(C), below, that this Stipulated Protective Order does not entitle
15 them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
16 procedures that must be followed and the standards that will be applied when a
17 party seeks permission from the Court to file material under seal.

18 **II. GOOD CAUSE STATEMENT**

19 A. This action is likely to involve trade secrets, pricing lists, commercial,
20 financial, technical and/or proprietary information for which special protection
21 from public disclosure and from use for any purpose other than prosecution of this
22 action is warranted. Such confidential and proprietary materials and information
23 consist of, among other things: (1) confidential pricing information; (2) information
24 implicating third-party privacy rights; (3) confidential product formulations; (4)
25 confidential and/or proprietary manufacturing and/or production specifications; and
26 (5) information otherwise generally unavailable to the public, or which may be
27 privileged or otherwise protected from disclosure under state or federal statutes,
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1 court rules, case decisions, or common law. Accordingly, to expedite the flow of
2 information, to facilitate the prompt resolution of disputes over confidentiality of
3 discovery materials, to adequately protect information the parties are entitled to
4 keep confidential, to ensure that the parties are permitted reasonable necessary uses
5 of such material in preparation for and in the conduct of trial, to address their
6 handling at the end of the litigation, and serve the ends of justice, a protective order
7 for such information is justified in this matter. It is the intent of the parties that
8 information will not be designated as confidential for tactical reasons and that
9 nothing be so designated without a good faith belief that it has been maintained in a
10 confidential, non-public manner, and there is good cause why it should not be part
11 of the public record of this case.

12 **III. DEFINITIONS**

13 A. Action: The instant action: *Engineered Floors, LLC v. Lakeshore*
14 *Equipment Company*, Case No. 2:21-CV-02078-JAK-DFM

15 B. Challenging Party: A Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 C. “CONFIDENTIAL” Information or Items: Information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
20 the Good Cause Statement.

21 D. Counsel: Outside Counsel of Record and House Counsel (as well as
22 their support staff).

23 E. Designating Party: A Party or Non-Party that designates information
24 or items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 F. Disclosure or Discovery Material: All items or information, regardless
27 of the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 G. Expert: A person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to
5 serve as an expert witness or as a consultant in this Action.

6 H. House Counsel: Attorneys who are employees of a party to this
7 Action. House Counsel does not include Outside Counsel of Record or any other
8 outside counsel.

9 I. Non-Party: Any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 J. Outside Counsel of Record: Attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action and
13 have appeared in this Action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party, and includes support staff.

15 K. Party: Any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 L. Producing Party: A Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 M. Professional Vendors: Persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 N. Protected Material: Any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 O. Receiving Party: A Party that receives Disclosure or Discovery
27 Material from a Producing Party.

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1 **IV. SCOPE**

2 A. The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 B. Any use of Protected Material at trial shall be governed by the orders
8 of the trial judge. This Order does not govern the use of Protected Material at trial.

9 **V. DURATION**

10 A. Even after final disposition of this litigation, the confidentiality
11 obligations imposed by this Order shall remain in effect until a Designating Party
12 agrees otherwise in writing or a court order otherwise directs. Final disposition
13 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
14 Action, with or without prejudice; and (2) final judgment herein after the
15 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
16 this Action, including the time limits for filing any motions or applications for
17 extension of time pursuant to applicable law.

18 **VI. DESIGNATING PROTECTED MATERIAL**

19 A. Exercise of Restraint and Care in Designating Material for Protection

20 1. Each Party or Non-Party that designates information or items for
21 protection under this Order must take care to limit any such designation to specific
22 material that qualifies under the appropriate standards. The Designating Party must
23 designate for protection only those parts of material, documents, items, or oral or
24 written communications that qualify so that other portions of the material,
25 documents, items, or communications for which protection is not warranted are not
26 swept unjustifiably within the ambit of this Order.

27 2. Mass, indiscriminate, or routinized designations are prohibited.

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1 Designations that are shown to be clearly unjustified or that have been made for an
2 improper purpose (e.g., to unnecessarily encumber the case development process or
3 to impose unnecessary expenses and burdens on other parties) may expose the
4 Designating Party to sanctions.

5 3. If it comes to a Designating Party's attention that information or
6 items that it designated for protection do not qualify for protection, that Designating
7 Party must promptly notify all other Parties that it is withdrawing the inapplicable
8 designation.

9 B. Manner and Timing of Designations

10 1. Except as otherwise provided in this Order (*see, e.g.*, Section
11 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery
12 Material that qualifies for protection under this Order must be clearly so designated
13 before the material is disclosed or produced.

14 2. Designation in conformity with this Order requires the
15 following:

16 a. For information in documentary form (e.g., paper or
17 electronic documents, but excluding transcripts of depositions or other pretrial or
18 trial proceedings), that the Producing Party affix at a minimum, the legend
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
20 contains protected material. If only a portion or portions of the material on a page
21 qualifies for protection, the Producing Party also must clearly identify the protected
22 portion(s) (e.g., by making appropriate markings in the margins).

23 b. A Party or Non-Party that makes original documents
24 available for inspection need not designate them for protection until after the
25 inspecting Party has indicated which documents it would like copied and produced.
26 During the inspection and before the designation, all of the material made available
27 for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
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1 identified the documents it wants copied and produced, the Producing Party must
2 determine which documents, or portions thereof, qualify for protection under this
3 Order. Then, before producing the specified documents, the Producing Party must
4 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
5 If only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins).

8 c. For testimony given in depositions, that the Designating
9 Party identify the Disclosure or Discovery Material on the record, before the close
10 of the deposition all protected testimony.

11 d. For information produced in form other than document
12 and for any other tangible items, that the Producing Party affix in a prominent place
13 on the exterior of the container or containers in which the information is stored the
14 legend “CONFIDENTIAL.” If only a portion or portions of the information
15 warrants protection, the Producing Party, to the extent practicable, shall identify the
16 protected portion(s).

17 C. Inadvertent Failure to Designate

18 1. If timely corrected, an inadvertent failure to designate qualified
19 information or items does not, standing alone, waive the Designating Party’s right
20 to secure protection under this Order for such material. Upon timely correction of a
21 designation, the Receiving Party must make reasonable efforts to assure that the
22 material is treated in accordance with the provisions of this Order.

23 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 A. Timing of Challenges

25 1. Any party or Non-Party may challenge a designation of
26 confidentiality at any time that is consistent with the Court’s Scheduling Order.

27 B. Meet and Confer

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1 1. The Challenging Party shall initiate the dispute resolution
2 process under Local Rule 37.1 et seq.

3 C. The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party’s designation until the Court rules on the
10 challenge.

11 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 A. Basic Principles

13 1. A Receiving Party may use Protected Material that is disclosed
14 or produced by another Party or by a Non-Party in connection with this Action only
15 for prosecuting, defending, or attempting to settle this Action. Such Protected
16 Material may be disclosed only to the categories of persons and under the
17 conditions described in this Order. When the Action has been terminated, a
18 Receiving Party must comply with the provisions of Section XIV below.

19 2. Protected Material must be stored and maintained by a
20 Receiving Party at a location and in a secure manner that ensures that access is
21 limited to the persons authorized under this Order.

22 B. Disclosure of “CONFIDENTIAL” Information or Items

23 1. Unless otherwise ordered by the Court or permitted in writing
24 by the Designating Party, a Receiving Party may disclose any information or item
25 designated “CONFIDENTIAL” only to:

26 a. The Receiving Party’s Outside Counsel of Record in this
27 Action, as well as employees of said Outside Counsel of Record to whom it is
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1 reasonably necessary to disclose the information for this Action;

2 b. The officers, directors, and employees (including House
3 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
4 Action;

5 c. Experts (as defined in this Order) of the Receiving Party
6 to whom disclosure is reasonably necessary for this Action and who have signed
7 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 d. The Court and its personnel;

9 e. Court reporters and their staff;

10 f. Professional jury or trial consultants, mock jurors, and
11 Professional Vendors to whom disclosure is reasonably necessary or this Action
12 and who have signed the “Acknowledgment and Agreement to be Bound” attached
13 as Exhibit A hereto;

14 g. The author or recipient of a document containing the
15 information or a custodian or other person who otherwise possessed or knew the
16 information;

17 h. During their depositions, witnesses, and attorneys for
18 witnesses, in the Action to whom disclosure is reasonably necessary provided: (i)
19 the deposing party requests that the witness sign the “Acknowledgment and
20 Agreement to Be Bound;” and (ii) they will not be permitted to keep any
21 confidential information unless they sign the “Acknowledgment and Agreement to
22 Be Bound,” unless otherwise agreed by the Designating Party or ordered by the
23 Court. Pages of transcribed deposition testimony or exhibits to depositions that
24 reveal Protected Material may be separately bound by the court reporter and may
25 not be disclosed to anyone except as permitted under this Stipulated Protective
26 Order; and

27 i. Any mediator or settlement officer, and their supporting
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1 personnel, mutually agreed upon by any of the parties engaged in settlement
2 discussions.

3 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

5 A. If a Party is served with a subpoena or a court order issued in other
6 litigation that compels disclosure of any information or items designated in this
7 Action as “CONFIDENTIAL,” that Party must:

8 1. Promptly notify in writing the Designating Party. Such
9 notification shall include a copy of the subpoena or court order;

10 2. Promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material covered by the
12 subpoena or order is subject to this Protective Order. Such notification shall
13 include a copy of this Stipulated Protective Order; and

14 3. Cooperate with respect to all reasonable procedures sought to be
15 pursued by the Designating Party whose Protected Material may be affected.

16 B. If the Designating Party timely seeks a protective order, the Party
17 served with the subpoena or court order shall not produce any information
18 designated in this action as “CONFIDENTIAL” before a determination by the
19 Court from which the subpoena or order issued, unless the Party has obtained the
20 Designating Party’s permission. The Designating Party shall bear the burden and
21 expense of seeking protection in that court of its confidential material and nothing
22 in these provisions should be construed as authorizing or encouraging a Receiving
23 Party in this Action to disobey a lawful directive from another court.

24 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO**
25 **BE PRODUCED IN THIS LITIGATION**

26 A. The terms of this Order are applicable to information produced by a
27 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
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1 produced by Non-Parties in connection with this litigation is protected by the
2 remedies and relief provided by this Order. Nothing in these provisions should be
3 construed as prohibiting a Non-Party from seeking additional protections.

4 B. In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is
6 subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

8 1. Promptly notify in writing the Requesting Party and the Non-
9 Party that some or all of the information requested is subject to a confidentiality
10 agreement with a Non-Party;

11 2. Promptly provide the Non-Party with a copy of the Stipulated
12 Protective Order in this Action, the relevant discovery request(s), and a reasonably
13 specific description of the information requested; and

14 3. Make the information requested available for inspection by the
15 Non-Party, if requested.

16 C. If the Non-Party fails to seek a protective order from this court within
17 14 days of receiving the notice and accompanying information, the Receiving Party
18 may produce the Non-Party's confidential information responsive to the discovery
19 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
20 not produce any information in its possession or control that is subject to the
21 confidentiality agreement with the Non-Party before a determination by the court.
22 Absent a court order to the contrary, the Non-Party shall bear the burden and
23 expense of seeking protection in this court of its Protected Material.

24 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED** 25 **MATERIAL**

26 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
27 disclosed Protected Material to any person or in any circumstance not authorized
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1 under this Stipulated Protective Order, the Receiving Party must immediately (1)
2 notify in writing the Designating Party of the unauthorized disclosures, (2) use its
3 best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform
4 the person or persons to whom unauthorized disclosures were made of all the terms
5 of this Order, and (4) request such person or persons to execute the
6 “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit
7 A.

8 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR**
9 **OTHERWISE PROTECTED MATERIAL**

10 A. When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other
12 protection, the obligations of the Receiving Parties are those set forth in Federal
13 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
14 whatever procedure may be established in an e-discovery order that provides for
15 production without prior privilege review. Pursuant to Federal Rule of Evidence
16 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
17 of a communication or information covered by the attorney-client privilege or work
18 product protection, the parties may incorporate their agreement in the Stipulated
19 Protective Order submitted to the Court.

20 **XIII. MISCELLANEOUS**

21 A. Right to Further Relief

22 1. Nothing in this Order abridges the right of any person to seek its
23 modification by the Court in the future.

24 B. Right to Assert Other Objections

25 1. By stipulating to the entry of this Protective Order, no Party
26 waives any right it otherwise would have to object to disclosing or producing any
27 information or item on any ground not addressed in this Stipulated Protective
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1 Order. Similarly, no Party waives any right to object on any ground to use in
2 evidence of any of the material covered by this Protective Order.

3 C. Filing Protected Material

4 1. A Party that seeks to file under seal any Protected Material must
5 comply with Civil Local Rule 79-5. Protected Material may only be filed under
6 seal pursuant to a court order authorizing the sealing of the specific Protected
7 Material at issue. If a Party's request to file Protected Material under seal is denied
8 by the Court, then the Receiving Party may file the information in the public record
9 unless otherwise instructed by the Court.

10 **XIV. FINAL DISPOSITION**

11 A. After the final disposition of this Action, as defined in Section V,
12 within sixty (60) days of a written request by the Designating Party, each Receiving
13 Party must return all Protected Material to the Producing Party or destroy such
14 material. As used in this subdivision, "all Protected Material" includes all copies,
15 abstracts, compilations, summaries, and any other format reproducing or capturing
16 any of the Protected Material. Whether the Protected Material is returned or
17 destroyed, the Receiving Party must submit a written certification to the Producing
18 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
19 deadline that (1) identifies (by category, where appropriate) all the Protected
20 Material that was returned or destroyed and (2) affirms that the Receiving Party has
21 not retained any copies, abstracts, compilations, summaries or any other format
22 reproducing or capturing any of the Protected Material. Notwithstanding this
23 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
24 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
25 deposition and trial exhibits, expert reports, attorney work product, and consultant
26 and expert work product, even if such materials contain Protected Material. Any
27 such archival copies that contain or constitute Protected Material remain subject to
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1 this Protective Order as set forth in Section V.

2 B. Any violation of this Order may be punished by any and all
3 appropriate measures including, without limitation, contempt proceedings and/or
4 monetary sanctions.

5
6 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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8
9
10 Dated: May 6, 2021

11 
12 _____
13 HON. DOUGLAS F. MCCORMICK
14 United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of _____
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was
7 issue by the United States District Court for the Central District of California on
8 [DATE] in the case of _____ [insert formal name of the case
9 and the number and initials assigned to it by the Court]. I agree to comply with and
10 to be bound by all the terms of this Stipulated Protective Order and I understand
11 and acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in
13 any manner any information or item that is subject to this Stipulated Protective
14 Order to any person or entity except in strict compliance with the provisions of this
15 Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing the terms of this
18 Stipulated Protective Order, even if such enforcement proceedings occur after
19 termination of this action. I hereby appoint _____ [print or
20 type full name] of _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed Name: _____

27 Signature: _____

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