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Attorneys For Plaintiff

12 Attorneys For Defendant
13 JLG Industries, Inc.

14
 15 **UNITED STATES DISTRICT COURT**
 16 **DISTRICT OF MONTANA**
GREAT FALLS DIVISION

17 JEREMY SUNDHEIM, a married
 18 individual,

19 Plaintiff,

20 vs.

21
 22 JLG INDUSTRIES, INC., a
 23 Pennsylvania Corporation,

24 Defendant.
25

) Case No. 4:17-cv-00002-BMM

) Judge: Hon. Brian M. Morris

) **STIPULATED PROTECTIVE ORDER**

) Complaint Filed: September 27, 2016

26 1. PURPOSES AND LIMITATIONS
27

1 Disclosure and discovery activity in this action are likely to involve production of
2 confidential, proprietary, or private information for which special protection from public
3 disclosure and from use for any purpose other than prosecuting this litigation may be
4 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
5 following Stipulated Protective Order. The parties acknowledge that this Order does not
6 confer blanket protections on all disclosures or responses to discovery and that the
7 protection it affords from public disclosure and use extends only to the limited information
8 or items that are entitled to confidential treatment under the applicable legal principles.
9 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
10 Protective Order does not entitle them to file confidential information under seal; Civil
11 Local Rule 5.1 sets forth the procedures that must be followed and the standards that will
12 be applied when a party seeks permission from the court to file material under seal.
13

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it
18 is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
21 (as well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items
23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other
26 things, testimony, transcripts, and tangible things), that are produced or generated in
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1 disclosures or responses to discovery in this matter.

2 2.6 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
4 expert witness or as a consultant in this action.

5 2.7 House Counsel: attorneys who are employees of a party to this action. House
6 Counsel does not include Outside Counsel of Record or any other outside counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or other
8 legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
10 this action but are retained to represent or advise a party to this action and have appeared
11 in this action on behalf of that party or are affiliated with a law firm which has appeared
12 on behalf of that party.

13 2.10 Party: any party to this action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
21 their employees and subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated
23 as “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
25 a Producing Party.

26 3. SCOPE
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1 The protections conferred by this Stipulation and Order cover not only Protected
2 Material (as defined above), but also (1) any information copied or extracted from
3 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
4 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
5 that might reveal Protected Material. However, the protections conferred by this
6 Stipulation and Order do not cover the following information: (a) any information that is
7 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
8 public domain after its disclosure to a Receiving Party as a result of publication not
9 involving a violation of this Order, including becoming part of the public record through
10 trial or otherwise; and (b) any information known to the Receiving Party prior to the
11 disclosure or obtained by the Receiving Party after the disclosure from a source who
12 obtained the information lawfully and under no obligation of confidentiality to the
13 Designating Party. Any use of Protected Material at trial shall be governed by a separate
14 agreement or order.

15 4. DURATION

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

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
25 Party or Non-Party that designates information or items for protection under this Order
26 must take care to limit any such designation to specific material that qualifies under the
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1 appropriate standards. The Designating Party must designate for protection only those
2 parts of material, documents, items, or oral or written communications that qualify – so
3 that other portions of the material, documents, items, or communications for which
4 protection is not warranted are not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that
6 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
7 to unnecessarily encumber or retard the case development process or to impose
8 unnecessary expenses and burdens on other parties) expose the Designating Party to
9 sanctions.

10 If it comes to a Designating Party’s attention that information or items that it
11 designated for protection do not qualify for protection, that Designating Party must
12 promptly notify all other Parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
15 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
16 must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

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

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

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
10 the Designating Party identify on the record, before the close of the deposition, hearing, or
11 other proceeding, all protected testimony.

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

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
19 to designate qualified information or items does not, standing alone, waive the Designating
20 Party’s right to secure protection under this Order for such material. Upon timely
21 correction of a designation, the Receiving Party must make reasonable efforts to assure
22 that the material is treated in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
25 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s
26 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
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1 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
2 Party does not waive its right to challenge a confidentiality designation by electing not to
3 mount a challenge promptly after the original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process by providing written notice of each designation it is challenging and describing the
6 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
7 written notice must recite that the challenge to confidentiality is being made in accordance
8 with this specific paragraph of the Protective Order. The parties shall attempt to resolve
9 each challenge in good faith and must begin the process by conferring directly (in voice to
10 voice dialogue; other forms of communication are not sufficient) within 14 days of the
11 date of service of notice. In conferring, the Challenging Party must explain the basis for its
12 belief that the confidentiality designation was not proper and must give the Designating
13 Party an opportunity to review the designated material, to reconsider the circumstances,
14 and, if no change in designation is offered, to explain the basis for the chosen designation.
15 A Challenging Party may proceed to the next stage of the challenge process only if it has
16 engaged in this meet and confer process first or establishes that the Designating Party is
17 unwilling to participate in the meet and confer process in a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Designating Party shall file and serve a motion to retain confidentiality
20 under Civil Local Rule 7 (and in compliance with Civil Local Rule 5.1, if applicable)
21 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
22 that the meet and confer process will not resolve their dispute, whichever is earlier. Each
23 such motion must be accompanied by a competent declaration affirming that the movant
24 has complied with the meet and confer requirements imposed in the preceding paragraph.
25 Failure by the Designating Party to make such a motion including the required declaration
26 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
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1 designation for each challenged designation. In addition, the Challenging Party may file a
2 motion challenging a confidentiality designation at any time if there is good cause for
3 doing so, including a challenge to the designation of a deposition transcript or any portions
4 thereof. Any motion brought pursuant to this provision must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and confer
6 requirements imposed by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
9 harass or impose unnecessary expenses and burdens on other parties) may expose the
10 Challenging Party to sanctions. Unless the Designating Party has waived the
11 confidentiality designation by failing to file a motion to retain confidentiality as described
12 above, all parties shall continue to afford the material in question the level of protection to
13 which it is entitled under the Producing Party's designation until the court rules on the
14 challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this case
18 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
19 Material may be disclosed only to the categories of persons and under the conditions
20 described in this Order. When the litigation has been terminated, a Receiving Party must
21 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

25
26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
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1 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
2 may disclose any information or item designated “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
4 employees of said Outside Counsel of Record to whom it is reasonably necessary to
5 disclose the information for this litigation and who have signed the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A;

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
9 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
11 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, mock
15 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
16 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
17 (Exhibit A);

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
20 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
21 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
22 Protected Material must be separately bound by the court reporter and may not be
23 disclosed to anyone except as permitted under this Stipulated Protective Order.

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.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

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

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected.

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

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
23 THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this action and designated as “CONFIDENTIAL.” Such information produced by
26 Non-Parties in connection with this litigation is protected by the remedies and relief
27

1 provided by this Order. Nothing in these provisions should be construed as prohibiting a
2 Non-Party from seeking additional protections.

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

7 (1) promptly notify in writing the Requesting Party and the Non-Party that
8 some or all of the information requested is subject to a confidentiality agreement with a
9 Non-Party;

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

13 (3) make the information requested available for inspection by the Non-
14 Party.

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

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the
27

1 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
2 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
3 unauthorized disclosures were made of all the terms of this Order, and (d) request such
4 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
5 attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED 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
10 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
11 This provision is not intended to modify whatever procedure may be established in an e-
12 discovery order that provides for production without prior privilege review. Pursuant to
13 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
14 effect of disclosure of a communication or information covered by the attorney-client
15 privilege or work product protection, the parties may incorporate their agreement in the
16 stipulated protective order submitted to the court.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
19 to seek its modification by the court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
21 Order no Party waives any right it otherwise would have to object to disclosing or
22 producing any information or item on any ground not addressed in this Stipulated
23 Protective Order. Similarly, no Party waives any right to object on any ground to use in
24 evidence of any of the material covered by this Protective Order.

25 12.3 Filing Protected Material. Without written permission from the Designating
26 Party or a court order secured after appropriate notice to all interested persons, a Party may
27

1 not file in the public record in this action any Protected Material. A Party that seeks to file
2 under seal any Protected Material must comply with Civil Local Rule 5.1. Protected
3 Material may only be filed under seal pursuant to a court order authorizing the sealing of
4 the specific Protected Material at issue. Pursuant to Civil Local Rule 5.1, a sealing order
5 will issue only upon a request establishing that the Protected Material at issue is
6 privileged, protectable as a trade secret, or otherwise entitled to protection under the law.

7 13. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action, as defined in paragraph 4,
9 each Receiving Party must return all Protected Material to the Producing Party or destroy
10 such material. As used in this subdivision, “all Protected Material” includes all copies,
11 abstracts, compilations, summaries, and any other format reproducing or capturing any of
12 the Protected Material. Whether the Protected Material is returned or destroyed, the
13 Receiving Party must submit a written certification to the Producing Party (and, if not the
14 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
15 (by category, where appropriate) all the Protected Material that was returned or destroyed
16 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
17 compilations, summaries or any other format reproducing or capturing any of the
18 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
19 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
20 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
21 work product, and consultant and expert work product, even if such materials contain
22 Protected Material. Any such archival copies that contain or constitute Protected Material
23 remain subject to this Protective Order as set forth in Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Respectfully submitted,

3
4 Dated: July 18, 2017

UGRIN, ALEXANDER, ZADICK &
HIGGINS, PC

5
6 By: /s/ Gary M. Zadick

Gary M. Zadick

7 Attorneys for Defendant JLG Industries, Inc.

8
9 Dated: July 18, 2017

SHOOK, HARDY & BACON L.L.P.

10 By: /s/ Naoki S. Kaneko

11 Naoki S. Kaneko

12 Attorneys for Defendant JLG Industries, Inc.

13
14 Dated: July 18, 2017

PISKEL YAHNE KOVARIK, PLLC

15 By: /s/ Nicholas D. Kovarik

16 Nicholas D. Kovarik

17 Attorneys for Plaintiff Jeremy Sundheim

18
19 Dated: July 18, 2017

JOHNSON LAW FIRM, PC

20 By: /s/ Sean E. Johnson

21 Sean E. Johnson

22 Attorneys for Plaintiff Jeremy Sundheim

23
24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25
26 DATED: 7/24/2017



27 Hon. Brian M. Morris

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [full name], of _____
4 [full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District
6 Court for the District of Montana Great Falls Division on _____ [date] in the
7 case of Jeremy Sundheim v. JLG Industries, Inc., Case No. 4:17-cv-00002-BMM. I agree
8 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
11 manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order. I further
13 agree to submit to the jurisdiction of the United States District Court for the District of
14 Montana Great Falls Division for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this
16 action.

17 I hereby appoint _____ [full name] of
18 _____ [full address and telephone number]
19 as my Montana agent for service of process in connection with this action or any
20 proceedings related to enforcement of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

Dated: July 18, 2017

By: /s/ Naoki S. Kaneko

Naoki S. Kaneko