

b. Upon the production of documents by a Party, the other Parties will have an opportunity to review such documents. Within a reasonable time of such receipt or review, and in no event longer than 30 days after the production copies have been served, a Party may designate some or all of such documents produced by another Party as constituting or containing CBI by the means described in paragraph 11 below. During the period during which a Party may determine whether or not documents produced by another Party constitute CBI, all Parties shall maintain the confidentiality of all such documents as if they constitute or contain CBI. Once the time period in which a Party may designate such documents has passed, the documents shall be treated under this protective order as CBI or not, whichever the case may be.

2. As used in this Protective Order, "Confidential Information" means and shall include any and all information or material that a Party believes in good faith contains, relates, or refers to confidential or private information, or information of a confidential commercial nature, as those terms are used in Mo. R. Civ. P. 56.01(c) and case law construing the same, which is not known by or generally is not available to, or accessible by the general public at the time the information is produced, including any information or material that is required to be kept confidential due to preexisting obligations, including contractual, statutory, or other legal obligations, and that if disclosed to a business competitor or the general public may cause injury to a Party's competitive position. "Confidential - Attorney's Eyes Only" means and shall include any and all information or material that a Party believes, in good faith, contains, relates, or refers to confidential or private information, or information of a confidential commercial nature, as those terms are used in Mo. R. Civ. P. 56.01(c) and case law construing the same, which is not known by or generally is not available to, or accessible by the general public at the time the information is produced, and for which the Party reasonably and in good faith believes a

heightened level of confidentiality exists, including any information or material relating to trade secrets; proprietary business information; financial information; confidential research including market and/or product research; pricing strategies; design including plant and facilities design, development, manufacturing, processing, and operations information; current and prospective customer lists; business plans; formulas; market analyses; confidential business information and/or documents (as described in 5 U.S.C. § 552, 40 C.F.R. Part 2, and/or their state equivalents) provided to the Environmental Protection Agency, the Office of the Attorney General of the State of Missouri, the Missouri Department of Natural Resources, or any other federal, state, or local government agency or other government entity; documents containing Social Security numbers; documents or information protected by The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule; and/or other technical, policy, or commercial information that if disclosed to a business competitor or the general public may cause injury to a Party's competitive position.

3. Any summaries of "Confidential Information" or "Confidential - Attorney's Eyes Only" information or any other writings or records that quote from, identify, refer to, or reproduce the substance of the "Confidential Information" or "Confidential - Attorney's Eyes Only" information with such specificity that the information or material can be identified, or by reasonably logical extension can be identified, shall be accorded the same status of confidentiality as the underlying information or material from which the summaries are made, and shall be subject to all of the terms of this Protective Order.

4. A Party may designate depositions or other testimony "Confidential Information" or "Confidential - Attorney's Eyes Only" by:

a. Stating orally with specificity on the record the day the testimony is given that the information to be provided to specific questions or regarding specific subject matters is expected to be "Confidential Information" or "Confidential – Attorney's Eyes Only" or;

b. Sending written notice designating by page and line the portions of the transcript of the deposition or other testimony to be treated as "Confidential Information" or "Confidential – Attorney's Eyes Only" within twenty (20) days after the designating Party's receipt of the transcript. In order to permit time for such designation, all deposition testimony shall be treated as "Confidential Information" for thirty (30) days from the mailing of the deposition transcript by the court reporter.

The following legend shall be placed on the front of the original deposition transcript and each copy of the transcript containing "Confidential Information" or "Confidential – Attorney's Eyes Only" information: *"Contains 'Confidential Information' and/or 'Confidential – Attorney's Eyes Only' information – Refer to Protective Order."* Exhibits to depositions consisting of or containing "Confidential Information" or "Confidential – Attorney's Eyes Only" information shall be placed in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order by reason of containing "Confidential Information" or "Confidential – Attorney's Eyes Only" information. Any Non-Party attending a deposition shall agree on the record at the start of the deposition to be bound by the terms of this Protective Order should "Confidential Information" or "Confidential – Attorney's Eyes Only" information be discussed.

5.a. A copy of this Protective Order shall be served along with any subpoena directed to a Non-Party seeking the production of documents in connection with this action. Any party

directing a subpoena to a Non-Party shall serve a copy of such subpoena upon all Parties contemporaneously with its issuance.

b. Upon receiving a copy of a subpoena to a Non-Party, a Party may notify the issuing Party if it is possible or likely that the Non-Party possesses CBI that is responsive to the subpoena.

c. Upon receipt of documents from a Non-Party, the Receiving Party shall within three business days provide all other Parties copies of the documents received or an opportunity to review such documents. Within 10 business days of such receipt or review, a Party may designate some or all of such documents as constituting or containing CBI by the means described in paragraph 11 below.

d. During the period during which a Party may determine whether or not documents produced by a Non-Party to a Receiving Party constitute or contain CBI, all Parties shall maintain the confidentiality of all such documents as if they constitute or contain CBI. Once the time period in which a Party may designate such documents as CBI has passed, the documents shall be treated under this Protective Order as CBI or not, whichever the case may be.

6. Except as otherwise provided by this Protective Order, access to and disclosure of "Confidential Information" shall be used only for purposes of prosecuting or defending this litigation; shall not be used, directly or indirectly, for any business, commercial, or competitive purposes; and shall not be revealed, discussed, or disclosed in any manner or in any form to any person, entity, or judicial tribunal other than:

a. Attorneys representing a named Party in this litigation, including in-house counsel, and the employees and support staff of such attorneys;

- b. Any Party or any Party's or its affiliated entities' officers, directors, and employees to whom it is reasonably necessary that the "Confidential Information" be shown for purposes of prosecuting or defending the litigation;
- c. Any expert or consultant retained by a Party or its counsel for the purpose of this litigation and his or her staff;
- d. The Court and any of its staff and personnel;
- e. Court reporters, videographers, and third parties retained by counsel to a Party in this litigation to provide litigation related support services for this litigation, such as graphics, trial exhibits, photocopy services, or document collection, retrieval, or storage services;
- f. Any witness or potential witness in this litigation who is identified in a document as a prior recipient thereof or to whom, in the good faith judgment of counsel for a Party reasonably exercised, disclosure of the material is necessary for purposes of prosecuting or defending this litigation, provided that (i) the disclosure is limited to that which is reasonably necessary to develop evidence in the course of this litigation; (ii) the disclosure is made for the purpose of advancing the disclosing Party's claims or defenses and for no other purpose; (iii) Counsel for the disclosing Party endeavors in good faith to redact or handle the protected information in such a manner as to disclose no more protected information than is reasonably necessary in order to develop evidence; (iv) the witness or potential witness is not permitted to retain the protected information after the witness or potential witness is questioned regarding the protected information; (v) the witness or potential witness is explicitly informed prior to any such disclosure that this Protective Order forbids him or her to disclose the protected information except as

otherwise permitted under this Protective Order, and that he/she is subject to this Court's jurisdiction for the purposes of enforcing this Protective Order; and, (vi) the witness acknowledges in writing prior to any such disclosure that he or she has been so informed and agrees to comply with the terms of this Protective Order; and

g. Any other person who is designated by written stipulation of the Parties or by Order of the Court, after notice to all Parties.

7. Information or material designated "Confidential Information" shall not be shown or disclosed to a person described in paragraphs 6(b), 6(c), 6(e), 6(f) or 6(g) until after that person is shown this Protective Order and signs and dates a written agreement to be bound by the terms of this Protective Order, which agreement shall be identical to that set forth in Exhibit 1 of this Protective Order. Counsel providing access to "Confidential Information" shall retain a copy of each such written agreement it obtains. For testifying experts, a copy of such agreement shall be furnished at the time the expert's designation is served, or at the time "Confidential Information" is provided to the testifying expert, whichever is later. Any Party seeking a copy of any other executed agreement may make a demand in writing setting forth the reasons for the demand, to which the opposing Party will respond in writing. If the dispute cannot be resolved, the demanding Party may move the Court for an order compelling production upon a showing of good cause.

8. Except as otherwise provided by this Protective Order, access to and disclosure of information or material designated "Confidential – Attorney's Eyes Only" shall be used only for purposes of prosecuting or defending this litigation; shall not be used, directly or indirectly, for any business, commercial, or competitive purposes; and shall not be revealed, discussed, or disclosed in any manner or in any form to any person, entity, or judicial tribunal other than:

KCP-1736486-2

- a. Attorneys representing a Party in this litigation, including in-house counsel, and the employees and support staff of such attorneys;
- b. Any expert or consultant retained by a Party or its counsel for the purpose of this litigation and his or her staff;
- c. The Court and any of its staff and personnel;
- d. Court reporters, videographers, and third parties retained by counsel to a Party in this litigation to provide litigation related support services for this litigation, such as graphics, trial exhibits, photocopy services, or document collection, retrieval, or storage services;
- e. Any witness or potential witness in this litigation who is identified in a document as a prior recipient thereof or to whom, in the good faith judgment of counsel for a Party reasonably exercised, disclosure of the material is necessary for purposes of prosecuting or defending this litigation, provided that (i) the disclosure is limited to that which is reasonably necessary to develop evidence in the course of this litigation; (ii) the disclosure is made for the purpose of advancing the disclosing Party's claims or defenses and for no other purpose; (iii) Counsel for the disclosing Party endeavors in good faith to redact or handle the protected information in such a manner as to disclose no more protected information than is reasonably necessary in order to develop evidence; (iv) the witness or potential witness is not permitted to retain the protected information after the witness or potential witness is questioned regarding the protected information; (v) the witness or potential witness is explicitly informed prior to any such disclosure that this Protective Order forbids him or her to disclose the protected information except as otherwise permitted under this Protective Order, and that he/she is subject to this Court's

jurisdiction for the purposes of enforcing this Protective Order; and, (vi) the witness acknowledges in writing prior to any such disclosure that he or she has been so informed and agrees to comply with the terms of this Protective Order; and

f. Any other person who is designated by written stipulation of the Parties or by Order of the Court.

9. Information or material designated "Confidential - Attorney's Eyes Only" shall not be shown or disclosed to a person described in paragraphs 8(b), 8(d) 8(e), or 8(f) until after that person is shown this Protective Order and signs and dates a written agreement to be bound by the terms of this Protective Order, which agreement shall be identical to that set forth in Exhibit 1 of this Protective Order. Counsel providing access to "Confidential - Attorney's Eyes Only" information shall retain a copy of each such written agreement it obtains. For testifying experts, a copy of such agreement shall be furnished at the time the expert's designation is served, or at the time "Confidential - Attorney's Eyes Only" information is provided to the testifying expert, whichever is later. Any Party seeking a copy of any other executed agreement may make a demand in writing setting forth the reasons for the demand, to which the opposing Party will respond in writing. If the dispute cannot be resolved, the demanding Party may move the Court for an order compelling production upon a showing of good cause.

10. Notwithstanding any provision contained in Paragraphs 6 and 8 above and the subparts contained therein, "Confidential Information" and "Confidential - Attorney's Eyes Only" information or material shall not be disclosed to a person currently employed by a customer or competitor of a Party without giving that Party ten (10) days advance notice regarding the disclosure, so that the Party can seek Court action regarding the propriety of the proposed disclosure. Within 60 days following entry of this Protective Order, each Defendant

shall provide the Parties with a list of companies that that Defendant considers a competitor for purposes of this Order. Each list shall be in effect unless within 14 days following receipt of the list, Plaintiff files a motion challenging it after attempting to resolve any disagreements with the Defendant over that issue and the Court grants that motion. A Defendant may modify its list, by providing Plaintiff five days written notice of such modification, which modification shall be in effect unless within 10 days following receipt of the modifications, Plaintiff files a motion challenging the modification after attempting to resolve any disagreements with the Defendant over the modification and the Court grants that motion.

11. Any Producing Party disclosing or producing hard copy documents or other information or material containing "Confidential Information" or "Confidential - Attorney's Eyes Only" information shall affix a label, stamp, or mark on each page of each such document, substantially stating that the information or material is "Confidential Information" or "Confidential - Attorney's Eyes Only." Such labeling, stamping, or marking shall be made prior to producing the information or material to the Receiving Party for inspection or copying. The failure to so label or mark any item will not be deemed in any manner an admission by any Party of lack of proprietary interest or confidentiality of such item.

12. To the extent that any Party or his/her/its counsel creates, develops, or otherwise establishes on any digital or analog machine-readable device, recording media, computers, discs, networks or tapes any information, files, databases, or programs that contain protected information received from a Producing Party or a Non-Party, he/she/it must take reasonable steps to insure that access to that electronic media is properly restricted to those persons who, under the terms of this Protective Order, may have access to the protected information. Any Producing Party disclosing or producing electronic media containing "Confidential Information" or

"Confidential – Attorney's Eyes Only" information shall either affix or associate or link a legend on the media or files thereon referring to "*Confidential Information*" or "*Confidential – Attorney's Eyes Only*" or, if that is not practicable, shall send opposing counsel a letter identifying the information or material that is designated "Confidential Information" or "Confidential – Attorney's Eyes Only."

13. Every person who receives "Confidential Information" or "Confidential – Attorney's Eyes Only" information or material shall:

- a. Maintain the confidentiality of such information or material;
- b. Not release or disclose the "Confidential Information" or "Confidential – Attorney's Eyes Only" information, or the nature, substance, or contents thereof, to any person not entitled to receive such information or material under the terms of this Protective Order; and
- c. Return or destroy the designated information or material and all copies thereof at the close of this litigation pursuant to the procedures set out in paragraph 20 below.

14. The inadvertent or unintentional failure of a Party to designate specific information or material as "Confidential Information" or "Confidential – Attorney's Eyes Only" shall not be deemed a waiver of that Party's claim of confidentiality or right to designate it as such upon discovery of the failure. Any Party who inadvertently fails to stamp or otherwise mark information or material the Party intended to be designated as "Confidential Information" or "Confidential – Attorney's Eyes Only" information shall promptly, upon discovery of its oversight, provide written notice of the oversight and shall provide substitute information or material that is stamped or otherwise marked as set forth hereunder. Upon notice of any such

failure to designate, the Receiving Party or person shall return any inadvertently undesignated material in its possession, shall reasonably cooperate to preserve on a going-forward basis the confidentiality of any inadvertently undesignated information or material, and shall make best efforts to obtain from each person and entity to whom the Party or counsel has disclosed the protected information who is not otherwise entitled to view the protected information pursuant to the terms of this Protective Order.

15. This Protective Order shall not prevent a Party from applying to the Court: (a) for relief therefrom; (b) for either enlargement or restriction of the rights of access to and/or use of information or material designated as "Confidential Information" or "Confidential - Attorney's Eyes Only;" (c) to challenge the propriety of the designation of certain information as "Confidential Information" or "Confidential - Attorney's Eyes Only" and/or the procedure for handling the same; (d) for further or additional protective orders; or (e) to modify this Protective Order, subject to the Court's approval. The burden of proving confidentiality rests with the party seeking confidentiality, as provided in the Missouri Rules of Civil Procedure.

16. In the event that a Party desires to provide access to or disseminate "Confidential Information" or "Confidential - Attorney's Eyes Only" information to any person not otherwise entitled to access such information or material, and the Parties cannot agree thereon, then the Party desiring to provide access to or disseminate the protected information or material may move the Court for an order permitting the disclosure for good cause shown.

17. The execution of this Protective Order shall not detract in any way from the right of a Party to object to the production of discovery materials on grounds other than confidentiality.

18. Any "Confidential Information" or "Confidential - Attorney's Eyes Only" information or material submitted to or filed with the Court, including any documents, pleadings, motions, transcripts, or other filings that disclose the contents or substance thereof, shall be submitted to the Clerk or the Court in a sealed envelope marked on the outside with the title of the action and a statement substantially in the following form:

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

This envelope filed by (name of Party) contains Confidential Information and is not to be opened, nor the contents thereof accessed or revealed, except by Court Order or by agreement of the Parties in the above entitled action.

Every such document shall be furnished in its entirety to this Court and to all counsel of record, and shall be treated as if designated "Confidential Information" or "Confidential - Attorney's Eyes Only," as appropriate.

19. Nothing contained in this Protective Order shall prevent a Party from using its own information or material designated as "Confidential Information" or "Confidential - Attorney's Eyes Only" information or such designated information that is currently in the Party's lawful possession, custody, or control, or that later comes into the possession of the Party from others lawfully in the possession of such protected information who are not parties to this case or otherwise bound by this Protective Order, in any way that it sees fit, or from revealing such information or material to whomever it chooses, without prior consent of any person or of the Court.

20. Nothing in this Protective Order shall be deemed to preclude any Party from challenging the validity of the confidentiality of any information or material so designated at any time. If any Party elects to challenge the designation of confidentiality of any information or material pursuant to this Protective Order, that Party shall notify the Party claiming

confidentiality of its challenge, in writing. Within twenty (20) days of the receipt of such written notice, the designating Party will either voluntarily remove the confidential designation or notify the challenging party that it will not remove the designation. Upon a Party's refusal to remove the designation, the challenging Party may move the Court for an order determining the propriety of the designation. Pending consideration of such motion, the information or material shall remain and be treated as "Confidential Information" or "Confidential - Attorney's Eyes Only" information until the Court rules on the motion.

21. Upon written request of a Party that designated the information or material as confidential, after final termination of this litigation (including the time for any appeal), counsel shall arrange for the return of all copies of any and all "Confidential Information" or "Confidential - Attorney's Eyes Only" information provided by the Producing Party that is in counsel's possession or that was provided by counsel to any person or entity pursuant to this Protective Order and shall return all such information or material to the Producing Party, or certify in writing to the Producing Party that all such information or material has been destroyed. If return of the information or material is requested, all reasonable out-of-pocket costs of such return shall be borne by the requesting Party. Notwithstanding the forgoing, counsel for each Party may retain copies, in confidence, of any "Confidential Information" or "Confidential - Attorney's Eyes Only" information contained in correspondence, pleadings, discovery, notes, research, or other work product contained in files maintained by the attorney in the normal course of representing his/her client in the litigation.

22. In the event any "Confidential Information" or "Confidential - Attorney's Eyes Only" information is used in any hearing in this litigation, it shall not lose its designated status through such use. Testimony taken at a hearing may be designated as confidential by making a

statement to that effect on the record at the hearing, or by designating such testimony as confidential within twenty (20) days of the designating Party's receipt of the transcript. The entry of this Protective Order shall not be construed to broaden or narrow any Party's obligation to produce information pursuant to the applicable rules of discovery. Nothing in this Protective Order shall be construed as a waiver of any right to object to the production of information in response to discovery.

23. This Protective Order does not govern use of "Confidential Information" or "Confidential - Attorney's Eyes Only" information at any trial in this litigation. Nothing in this Protective Order shall prevent a Party from using any "Confidential Information" or "Confidential - Attorney's Eyes Only" information at any hearing or trial or any proceeding in this litigation subject to such limitations as the Court may impose upon proper application. Prior to any hearing or trial at which the use of "Confidential Information" or "Confidential - Attorney's Eyes Only" information is anticipated, the Parties shall meet and confer regarding procedures for the use and protection of the confidential information. If the Parties cannot agree, the Parties shall request the Court to rule on such procedures.

24. If a Court or an administrative agency or Party subpoenas, requests production of, or orders production of information designated by another Party in this litigation as "Confidential Information" or "Confidential - Attorney's Eyes Only" pursuant to this Protective Order, the Party receiving such subpoena, request, or order shall promptly notify the Party or other person who designated the information or material as "Confidential Information" or "Confidential - Attorney's Eyes Only" of the pendency of the subpoena, request, or order. A Party receiving a subpoena shall not produce any confidential information in response to the legal process, except as ordered by a court or tribunal, until the Producing Party has had an opportunity to object to

such process and either declined to object or the Producing Party's objection has been overruled and all appeals have been exhausted. In addition, the subpoenaed Party must inform the issuer of the subpoena of this Protective Order and provide the issuer with a copy of this Protective Order. A Party ordered by a court or tribunal to produce confidential information shall not produce such information prior to the date of production specified in the order of the court or tribunal.

25. The inadvertent production of any discovery material by any Party shall be without prejudice to any claim by that Party that it is privileged or is protected by the work product doctrine or trial preparation materials doctrine or similar doctrines and shall not necessarily be deemed a waiver of any such privilege or protection. If, after discovery materials are disclosed, a Party notifies all Receiving Parties of a claim that materials are protected by the attorney-client privilege or attorney work product or trial preparation materials doctrine or any other applicable privilege or protection, the Receiving Party shall not make any use of the contested material, shall return all copies of the material to the Producing Party, and shall delete any versions of such inadvertently produced material maintained in electronic form. Once a Party requests that the Receiving Party return the inadvertently produced material and at all times thereafter, the Receiving Party shall neither refer to the privileged or protected material in any manner (whether written or oral, in any interrogatory, request for admission, document request, interview, deposition, oral argument, trial or submissions to the Court) nor disclose the substance of that material to any third party, except that the Receiving Party may reference the claimed privileged or protected material in an *in camera* filing with the Court challenging such claim of privilege or protection. Any such discovery material shall be treated as privileged until such time that this Court rules that such discovery material should not be treated as protected by any privilege or the work product doctrine, trial preparation materials doctrine, or similar doctrines.

If a Special Master makes the ruling, the material shall be treated as privileged if any objection or appeal is filed to the Circuit Judge. A Party must notify the other Party of the inadvertent disclosure as soon as reasonably practicable after discovery of the inadvertent disclosure.

26. Violation by any person of any provision of this Protective Order may, as circumstances warrant in the Court's discretion, be subject to relief as the Court orders.

27. The Court reserves the power and authority to remove documents from the scope of this Protective Order if it finds that such information does not constitute information or material properly protected by this Protective Order. The Court shall retain jurisdiction over the Parties for the purpose of ensuring compliance with this Protective Order and granting such amendments, modifications, and additions to this Protective Order and such other and further relief as may be necessary. Upon written agreement of the parties affected by a particular issue concerning confidentiality under this Order, any term of this Protective Order may be modified.

28. This Protective Order shall survive the final disposition of this case as to any party, whether by judgment, dismissal, settlement, appeal, or otherwise.

SO ORDERED.



JUDGE, CLINTON COUNTY CIRCUIT COURT

EXHIBIT 1

I, _____, certify that I have read the Protective Confidentiality Order dated _____, 2009, entered by the Circuit Court of Clinton County in the matter of William Kemper et al. v. Prime Tanning Corp., et al. Case No. 09CN-CV00333. The Protective Order has been fully explained to me, and I further certify that I fully understand the procedural and substantive requirements of the Protective Order, a copy of which is attached hereto. Before reviewing or receiving access to any document, material, information and/or discovery subject to the protection of the Protective Order and as a condition for such review and/or access, I understand and agree that I am personally bound by and subject to all of the terms and provisions of the Protective Order. I certify that I will abide by the all of the terms and provisions of the Protective Order, and I subject myself to the jurisdiction and venue of said Court for purposes of enforcement of the Protective Order.

(Signature)