UNITED STATES DISTRICT COURT

for the
Eastern District of Wisconsin

Champion Power Equipment, Inc.
Plaintiff
v.
Generac Power Systems, Inc.
Defendant

Civil Action No. 24-cv-1281

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Firman Power Equipment, Inc. 8644 W. Ludlow Drive, Peoria, AZ 85381
(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:
Please see Schedule A for document requests.

Place: Merchant & Gould P.C. 150 S 5th Street, Suite 2200, Minneapolis, MN 55419 or by Electronic File Transfer	Date and Time: February 24 at 4:00 p.m. CDT

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 2/14/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ *Thomas Leach*
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* *Generac Power Systems, Inc.* who issues or requests this subpoena, is: Thomas Leach, Merchant & Gould P.C., 150 South Fifth Street, Suite 2200, Minneapolis, MN 55402. TLeach@merchantgould.com, 612.336.4665.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 24-cv-1281

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Print Save As... Add Attachment

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

SCHEDULE A

Defendant Generac Power Systems, Inc., pursuant to Rules 34(c) and 45 of the Federal Rules of Civil Procedure, requests that Firman Power Equipment, Inc. produce and permit Defendant' attorneys to inspect and copy the documents and things described below.

INSTRUCTIONS & DEFINITIONS

INSTRUCTIONS

1. In answering these requests, please furnish all information available to You, not merely such information as the persons preparing the responses know of their own personal knowledge. In answering these requests, Defendant requests that You make a diligent search of Your records or other papers and materials in Your possession or the possession of Your employees, attorneys, consultants, or other representatives, alive or deceased, to the extent necessary to provide responsive information.

2. Unless otherwise indicated, these requests seek information through the present. These requests shall be deemed continuing so as to require prompt and further supplemental response if You obtain additional responsive information, most notably that specified under Rule 26(e) of the Federal Rules of Civil Procedure, at any time between the time for the initial response and the time of hearing or trial.

3. If You cannot respond to a request fully, after a diligent attempt to obtain the requested information, You are required to answer the request to the extent possible, specify the portion of the request You are unable to answer, and provide whatever information You have regarding the unanswered portion.

4. In accordance with Fed. R. Civ. P. 45(e)(2), where a claim of privilege is asserted in objecting to any request or part thereof, and information is not provided on the basis of such assertion:

    a) In asserting the privilege, the responding party shall, in the objection to the request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed and provide the information required by Fed. R. Civ. P. 26(b)(5);

5. Any document bearing any marks that are not part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of responding to the following document requests. Moreover, if the documents are produced as they are kept in the usual course of business, identical documents in separate files must be produced.

6. If you object to any part of a request for information or object to providing certain information requested, state the objection and answer the unobjectionable part(s) of the request for information and/or supply the unobjectionable information requested.

7. Defendant is available to meet and confer regarding the meaning and/or scope of any request.

8. The requested documents and things are to be made available at the offices of Merchant & Gould P.C., 150 South Fifth Street, Suite 2200, Minneapolis, Minnesota 55402, within ten (10) days after service of this document, or sooner if agreed to by the parties or ordered by the Court.

DEFINITIONS

Unless indicated otherwise, the following definitions are incorporated into each of the following Document Requests. All terms used herein shall be construed in an ordinary, common-sense manner, and not in a hyper-technical, strained, overly literal, or otherwise restrictive manner:

1. The use of the singular form of any word includes the plural, and use of the plural form includes the singular form.

2. "And" and "or" shall be understood as either conjunctive or disjunctive whichever is more inclusive in content.

3. "Document" or "documents" are used in their broadest sense and include information stored, recorded or written on any medium (including Communications), in any format, by any means, including both electronic and non-electronic means and mediums. A draft or non-identical copy is a separate document within the meaning of this term.

4. "Firman," "You," or "Your" means Firman Power Equipment Incorporated and all parents, subsidiaries, affiliates, predecessors and successors thereof, and any employee, officer, or other agent of any of the foregoing during the time periods specified in each request.

5. "Generac" or "Defendant" means Generac Power Systems, Inc.

6. "Patents-in-Suit" means United States Patent Nos. 10,221,780; 10,598,101; 10,697,398; 11,143,120; 11,143,145; 11,306,667; 11,492,985; 11,530,654; 11,840,970; 11,905,895; and 11,905,896.

7. "Champion Litigation" means lawsuit captioned *Champion Power Equipment Inc. v. Firman Power Equipment Inc.*, No. 2-23-cv-02371, pending in the U.S. District Court for the District of Arizona.

8. "Refer," "relate," and "concern" (and their forms) mean to refer to, relate to, pertain to, have a relationship to, evidence or constitute evidence of in-whole or in-part, to concern, involve, be connected with, reflect, indicate, exhibit, entail, include, implicate, name, reveal, expose, denote, imply, suggest, show, mention, demonstrate, contradict, or show signs of the subject matter of the request.

DOCUMENT REQUESTS

TOPIC NO. 1: All documents exchanged, served, or filed by the parties in the Champion Litigation relating to construction of any claim term of the Patents-in-Suit, including but not limited to correspondence, infringement contentions, invalidity contentions, proposed terms, proposed constructions, joint statements, exhibits, extrinsic evidence, declarations, deposition transcripts, discovery requests and responses, briefs, and court orders or opinions.

TOPIC NO. 2: All Prior Art to the Patents-in-Suit, including but not limited to any art identified or produced in the Champion Litigation or otherwise known to You.

TOPIC NO. 3: All Documents relating to or evidencing prior art or prior art activity, such as public disclosures, public uses, offers for sale, or sales to the Patents-in-Suit.

TOPIC NO. 4: All documents exchanged, served, or filed by the parties in the Champion Litigation relating to invalidity or unenforceability of any claim of the Patents-in-Suit, including but not limited to correspondence, invalidity contentions, exhibits, declarations, deposition transcripts, discovery requests and responses, briefs, and court orders or opinions.