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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Lisa DAVEY, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

THE HOME DEPOT USA, INC., a Delaware Corporation, and Does 1 through 50, inclusive,

Defendants.

Case No. 3:20-cv-2541-AJB-AGS

**ORDER GRANTING MOTION
AND STIPULATED PROTECTIVE
ORDER GOVERNING
DISCOVERY**

1. **PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, and/or private information, including but not limited to operational and financial data, wage data and personal and financial information regarding putative class members and/or aggrieved employees, for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. The parties in this action as well as putative class members and other third parties may be irreparably harmed if such private, confidential information, as defined below, is publicly disseminated. This Order is necessary for the purpose of protecting the interests of confidential

1 information in the parties' possession, to control the access to and use of such
2 information, and to provide a mechanism for enforcement of such protection and
3 control. Accordingly, the parties hereby stipulate to and petition the court to enter the
4 following Stipulated Protective Order. The parties also acknowledge that this
5 Stipulated Protective Order does not entitle them to file confidential information
6 under seal; Southern District Local Rules 79.2 sets forth the procedures that must be
7 followed and the standards that will be applied when a Party seeks permission from
8 the court to file materials under seal.

9 **2. DEFINITIONS**

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation
11 of information or items under this Order.

12 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for protection
14 under Federal Rule of Civil Procedure 26(c), as well as confidential, private or
15 personal information regarding current or former Home Depot U.S.A., Inc.
16 employees, confidential commercial or proprietary information, trade secrets, or any
17 other confidential information protected under state or federal law.

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House
19 Counsel (as well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 "CONFIDENTIAL."

23 2.5 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

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1 2.6 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or
8 other 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
10 to this action but are retained to represent or advise a party to this action and have
11 appeared in this action on behalf of that party or are affiliated with a law firm which
12 has appeared 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
17 Discovery 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)
21 and their employees and subcontractors.

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

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

26 **3. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

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

14 **4. DURATION**

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

23 **5. DESIGNATING PROTECTED MATERIAL**

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards for confidentiality under both the federal
28 and local rules. To the extent it is practical to do so, the Designating Party must

1 designate for protection only those parts of material, documents, items, or oral or
2 written communications that qualify – so that other portions of the material,
3 documents, items, or communications for which protection is not warranted are not
4 swept unjustifiably within the ambit of this Order. If it comes to a Designating Party’s
5 attention that information or items that it designated for protection do not qualify for
6 protection, that Designating Party must promptly notify all other Parties that it is
7 withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in
9 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
10 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
11 under this Order must be clearly so designated before the material is disclosed or
12 produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents,
15 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
16 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
17 protected material. A Party or Non-Party that makes original documents or materials
18 available for inspection need not designate them for protection until after the
19 inspecting Party has indicated which material it would like copied and produced.
20 During the inspection and before the designation, all of the material made available
21 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
22 identified the documents it wants copied and produced, the Producing Party must
23 determine which documents qualify for protection under this Order. Then, before
24 producing the specified documents, the Producing Party must affix the
25 “CONFIDENTIAL” legend to each page that contains Protected Material.

26 (b) for testimony given in deposition, that the Designating Party identify
27 portions of the testimony as to which protection is sought within 30 days of receipt
28 of the transcript. Only those portions of the testimony that are appropriately

1 designated for protection shall be covered by the provisions of this Stipulated
2 Protective Order. For testimony in other pretrial or trial proceedings, parties shall
3 meet and confer and propose reasonable procedures for use of Protected Material.
4 Transcripts containing Protected Material shall have an obvious legend on the title
5 page that the transcript contains Protected Material, and the title page shall be
6 followed by a list of all pages (including line numbers as appropriate) that have been
7 designated as Protected Material and the level of protection being asserted by the
8 Designating Party. The Designating Party shall inform the court reporter of these
9 requirements. Any transcript that is prepared before the expiration of a 30 day period
10 for designation shall be treated during that period as if it had been designated
11 “CONFIDENTIAL” in its entirety unless otherwise agreed. After the expiration of
12 that period, the transcript shall be treated only as actually designated.

13 (c) for information produced in some form other than documentary and for any
14 other tangible items, that the Producing Party affix in a prominent place on the
15 exterior of the container or containers in which the information or item is stored the
16 legend “CONFIDENTIAL.”

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to
19 designate qualified information or items does not, standing alone, waive the
20 Designating Party’s right to secure protection under this Order for such material.
21 Upon timely correction of a designation, the Receiving Party must make reasonable
22 efforts to assure that the material is treated in accordance with the provisions of this
23 Order.

24 5.4 Any contact information of Home Depot U.S.A., Inc.’s current or
25 former employees that is produced at any time during the course of, or in connection
26 with this litigation (“Personal Contact Information”), shall be deemed
27 CONFIDENTIAL and afforded the same protections and restrictions afforded to
28 Protected Material under the terms of this Stipulated Protective Order, whether or not

1 it is stamped or marked as CONFIDENTIAL. The designation of Personal Contact
2 Information as CONFIDENTIAL shall not be subject to objection or challenge
3 pursuant to Section 6 of this Stipulated Protective Order. Any Personal Contact
4 Information produced in this litigation shall be used by Plaintiff and Plaintiff's
5 counsel (or their staff) solely for the purpose of investigating and/or prosecuting this
6 litigation, and not for any other litigation, business, or other purpose whatsoever.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a Designating
10 Party's confidentiality designation is necessary to avoid foreseeable, substantial
11 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
12 litigation, a Party does not waive its right to challenge a confidentiality designation
13 by electing not to mount a challenge promptly after the original designation is
14 disclosed.

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

1 the Designating Party is unwilling to participate in the meet and confer process in a
2 timely manner.

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

18 The burden of persuasion in any such challenge proceeding shall be on the
19 Designating Party. Frivolous challenges, and those made for an improper purpose
20 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
21 expose the Challenging Party to sanctions. Unless the Designating Party has waived
22 the confidentiality designation by failing to file a motion to retain confidentiality as
23 described above, all parties shall continue to afford the material in question the level
24 of protection to which it is entitled under the Producing Party's designation until the
25 court rules on the challenge, and any review process of the court's ruling has been
26 exhausted.

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

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the litigation has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
17 employees of said Outside Counsel of Record, who are also bound by the terms of
18 this protective order and to whom it is reasonably necessary to disclose the
19 information for this litigation;

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

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, mock
28 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this

1 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to
5 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
6 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
7 reveal Protected Material must be separately bound by the court reporter and may not
8 be disclosed to anyone except as permitted under this Stipulated Protective Order.

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
12 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with
25 the subpoena or court order shall not produce any information designated in this
26 action as “CONFIDENTIAL” before a determination by the court from which the
27 subpoena or order issued, unless the Party has obtained the Designating Party’s
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material – and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this action to
3 disobey a lawful directive from another court.

4 9. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
5 **PRODUCED IN THIS LITIGATION**

6 (a) The terms of this Order are applicable to information produced by a Non-
7 Party in this action and designated as “CONFIDENTIAL.” Such information
8 produced by Non-Parties in connection with this litigation is protected by the
9 remedies and relief provided by this Order. Nothing in these provisions should be
10 construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce
12 a Non-Party’s confidential information in its possession, and the Party is subject to
13 an agreement with the Non-Party not to produce the Non-Party’s confidential
14 information, then the Party shall:

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

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

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

22 (c) If the Non-Party fails to object or seek a protective order from this court
23 within 14 days of receiving the notice and accompanying information, the Receiving
24 Party may produce the Non-Party’s confidential information responsive to the
25 discovery request. If the Non-Party timely seeks a protective order, the Receiving
26 Party shall not produce any information in its possession or control that is subject to
27 the confidentiality agreement with the Non-Party before a determination by the court.
28

1 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
2 of seeking protection in this court of its Protected Material.

3 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

12 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
13 **PROTECTED MATERIAL**

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

24 12. **MISCELLANEOUS**

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Stipulated Protective Order no Party waives any right it otherwise would have to

1 object to disclosing or producing any information or item on any ground not
2 addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
3 object on any ground to use in evidence of any of the material covered by this
4 Stipulated Protective Order. Nothing in this Stipulated Protective Order will be
5 deemed to be a limit on or waiver of the attorney-client privilege, work product
6 privilege, or any other relevant privilege.

7 12.3 Filing Protected Material. Without written permission from the
8 Designating Party or a court order secured after appropriate notice to all interested
9 persons, a Party may not file in the public record in this action any Protected Material.
10 A Party that seeks to file under seal any Protected Material must comply with
11 Southern District Civil Local Rule 79.2. Protected Material may only be filed under
12 seal pursuant to a court order authorizing the sealing of the specific Protected
13 Material at issue.

14 12.4 Additional Parties to Lawsuit. If other Parties are added to this action, no
15 Protected Material previously exchanged, produced, or used herein will be disclosed
16 to such other Parties or their Counsel except upon their agreeing to be bound by the
17 provisions of this Stipulated Protective Order.

18 13. **FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, as defined in paragraph
20 4, each Receiving Party must return all Protected Material to the Producing Party or
21 destroy such material. As used in this subdivision, “all Protected Material” includes
22 all copies, abstracts, compilations, summaries, and any other format reproducing or
23 capturing any of the Protected Material. Whether the Protected Material is returned
24 or destroyed, the Receiving Party must submit a written certification to the Producing
25 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
26 deadline that (1) identifies (by category, where appropriate) all the Protected Material
27 that was returned or destroyed and (2) affirms that the Receiving Party has not
28 retained any copies, abstracts, compilations, summaries or any other format

1 reproducing or capturing any of the Protected Material. Notwithstanding this
2 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
3 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
4 deposition and trial exhibits, expert reports, attorney work product, and consultant
5 and expert work product, even if such materials contain Protected Material. Any such
6 archival copies that contain or constitute Protected Material remain subject to this
7 Protective Order as set forth in Section 4 (DURATION).

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9 Dated: October 19, 2021

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11 Hon. Andrew G. Schopler
12 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print
4 or type 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 Court for
6 the Southern District of California on [date] in the case of *Lisa Davey v. Home Depot U.S.A., Inc.*,
7 Case No. 3:20-cv-2541-AJB-AGS (S.D. Cal.). I agree to comply with and to be bound by all the
8 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
9 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to this
11 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
12 of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the Southern
14 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
15 even if such enforcement proceedings occur after termination of this action.

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

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26 Signature: _____

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