

NOTE: CHANGES MADE BY THE COURT

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

BETSY BLACK,  
Plaintiff,  
v.  
THE HOME DEPOT U.S.A., INC. and  
DOES 1 TO 20,  
Defendants.

Case No: 2:17-cv-00934 MWF(PLAx)

**ORDER RE: STIPULATED  
PROTECTIVE ORDER**

**ORDER**

The Parties to the above-referenced action filed a joint Stipulated Protective Order. The Court having reviewed Stipulated Protective Order, and good cause appearing, orders as follows:

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, Court enters the following Stipulated Protective Order.

1           **2. DEFINITIONS**

2           2.1    Action: Betsy Black v. Home Depot U.S.A., Inc., 2:17-CV-00934  
3 MWF(PLAX) (Riverside County Superior Court Case No. BC643104)

4           2.2    Challenging Party: a Party or Non-Party that challenges the  
5 designation of information or items under this Order.

6           2.3    “CONFIDENTIAL” Information or Items: information (regardless of how it  
7 is generated, stored or maintained) or tangible things that qualify for protection under  
8 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
9 Statement.

10          2.4    Counsel: Outside Counsel of Record and House Counsel (as well as their  
11 support staff).

12          2.5    Designating Party: a Party or Non-Party that designates information or  
13 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

14          2.6    Disclosure or Discovery Material: all items or information, regardless of the  
15 medium or manner in which it is generated, stored, or maintained (including, among  
16 other things, testimony, transcripts, and tangible things), that are produced or generated  
17 in disclosures or responses to discovery in this matter.

18          2.7    Expert: a person with specialized knowledge or experience in a matter  
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
20 expert witness or as a consultant in this Action.

21          2.8    House Counsel: attorneys who are employees of a party to this Action.  
22 House Counsel does not include Outside Counsel of Record or any other outside  
23 counsel.

24          2.9    Non-Party: any natural person, partnership, corporation, association, or  
25 other legal entity not named as a Party to this action.

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1           2.10 Outside Counsel of Record: attorneys who are not employees of a party to  
2 this Action but are retained to represent or advise a party to this Action and have  
3 appeared in this Action on behalf of that party or are affiliated with a law firm which has  
4 appeared on behalf of that party, and includes support staff.

5           2.11 Party: any party to this Action, including all of its officers, directors,  
6 employees, consultants, retained experts, and Outside Counsel of Record (and their  
7 support staffs).

8           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this Action.

10          2.13 Professional Vendors: persons or entities that provide litigation support  
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
13 their employees and subcontractors.

14          2.14 Protected Material: any Disclosure or Discovery Material that is designated  
15 as “CONFIDENTIAL.”

16          2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
17 from a Producing Party.

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19       **3. SCOPE**

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

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

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1           **4. DURATION**

2           Even after final disposition of this litigation, the confidentiality obligations  
3 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
4 in writing or a court order otherwise directs. Final disposition shall be deemed to be the  
5 later of (1) dismissal of all claims and defenses in this Action, with or without  
6 prejudice; and (2) final judgment herein after the completion and exhaustion of all  
7 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits  
8 for filing any motions or applications for extension of time pursuant to applicable law.  
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10           **5. DESIGNATING PROTECTED MATERIAL**

11           5.1   Exercise of Restraint and Care in Designating Material for Protection. Each  
12 Party or Non-Party that designates information or items for protection under this Order  
13 must take care to limit any such designation to specific material that qualifies under the  
14 appropriate standards. The Designating Party must designate for protection only those  
15 parts of material, documents, items, or oral or written communications that qualify so  
16 that other portions of the material, documents, items, or communications for which  
17 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

25           5.2   Manner and Timing of Designations. Except as otherwise provided in this  
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
27 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
28 must be clearly so designated before the material is disclosed or produced.

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Designation in conformity with this Order requires:

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

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

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

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

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1           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
2 to designate qualified information or items does not, standing alone, waive the  
3 Designating Party's right to secure protection under this Order for such material. Upon  
4 timely correction of a designation, the Receiving Party must make reasonable efforts to  
5 assure that the material is treated in accordance with the provisions of this Order.

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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 that is consistent with the Court's Scheduling  
10 Order.

11           6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
12 resolution process under Local Rule 37.1 et seq.

13           6.3 The burden of persuasion in any such challenge proceeding shall be on the  
14 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
15 to harass or impose unnecessary expenses and burdens on other parties) may expose  
16 the Challenging Party to sanctions. Unless the Designating Party has waived or  
17 withdrawn the confidentiality designation, all parties shall continue to afford the  
18 material in question the level of protection to which it is entitled under the Producing  
19 Party's designation until the Court rules on the challenge.

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

22           7.1 Basic Principles. A Receiving Party may use Protected Material that is  
23 disclosed or produced by another Party or by a Non-Party in connection with this  
24 Action only for prosecuting, defending, or attempting to settle this Action. Such  
25 Protected Material may be disclosed only to the categories of persons and under the  
26 conditions described in this Order. When the Action has been terminated, a Receiving  
27 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
5 otherwise ordered by the court or permitted in writing by the Designating Party, a  
6 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
7 only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as  
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
10 disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of the  
12 Receiving Party to whom disclosure is reasonably necessary for this Action;

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

16 (d) the court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and Professional  
19 Vendors to whom disclosure is reasonably necessary for this Action and who have  
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) the author or recipient of a document containing the information or a  
22 custodian or other person who otherwise possessed or knew the information;

23 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
24 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
25 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not  
26 be permitted to keep any confidential information unless they sign the  
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed  
28 by the Designating Party or ordered by the court. Pages of transcribed deposition

1 testimony or exhibits to depositions that reveal Protected Material may be separately  
2 bound by the court reporter and may not be disclosed to anyone except as permitted  
3 under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,  
5 mutually agreed upon by any of the parties engaged in settlement discussions.

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

9 If a Party is served with a subpoena or a court order issued in other litigation that  
10 compels disclosure of any information or items designated in this Action as  
11 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

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

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

15                 (2) promptly provide the Non-Party with a copy of the Stipulated  
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
17 specific description of the information requested; and

18                 (3) make the information requested available for inspection by the Non-  
19 Party, if requested.

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

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

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

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

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

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23                   **12.    MISCELLANEOUS**

24                   12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
25 person to seek its modification by the Court in the future.

26                   12.2 Right to Assert Other Objections. By stipulating to the entry of this  
27 Protective Order no Party waives any right it otherwise would have to object to  
28 disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground  
2 to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected  
4 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
5 under seal pursuant to a court order authorizing the sealing of the specific Protected  
6 Material at issue; **good cause must be shown for the under seal filing.** If a Party's  
7 request to file Protected Material under seal is denied by the court, then the Receiving  
8 Party may file the information in the public record unless otherwise instructed by the  
9 court.

### 10 11 **13. FINAL DISPOSITION**

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

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**14. BREACH**

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

THE COURT FURTHER ORDERS AS FOLLOWS: \_\_\_\_\_  
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**FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

DATED: April 18, 2017

*Paul L. Abrams*

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Hon. Paul L. Abrams  
United States Magistrate Judge