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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

HOME DEPOT, U.S.A., INC.,)	CASE NO. 2:18-cv-03051 DDP (JCx)
Plaintiff,)	PROTECTIVE ORDER
vs.)	DATE ACTION FILED: 4/11/2018
TWIN CITY FIRE INSURANCE)	TRIAL DATE: None
COMPANY, NATIONAL UNION)	
FIRE INSURANCE COMPANY)	
OF PITTSBURGH, and DOES 1-)	
20,)	
Defendants.)	

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that 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, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential

1 information under seal. Rather, when the parties seek permission from the court to
2 file material under seal, the parties must comply with Civil Local Rule 79-5 and
3 with any pertinent orders of the assigned District Judge and Magistrate Judge.

4 **B. GOOD CAUSE STATEMENT**

5 In light of the nature of the claims and allegations in this case and the
6 parties' representations that discovery in this case will involve the production of
7 confidential records, and in order to expedite the flow of information, to facilitate
8 the prompt resolution of disputes over confidentiality of discovery materials, to
9 adequately protect information the parties are entitled to keep confidential, to
10 ensure that the parties are permitted reasonable necessary uses of such material in
11 connection with this action, to address their handling of such material at the end of
12 the litigation, and to serve the ends of justice, a protective order for such
13 information is justified in this matter. The parties shall not designate any
14 information/documents as confidential without a good faith belief that such
15 information/documents have been maintained in a confidential, non-public manner,
16 and that there is good cause or a compelling reason why it should not be part of the
17 public record of this case.

18 **2. DEFINITIONS**

19 2.1 Action: *Home Depot, U.S.A., Inc. v. Twin City Fire Insurance*
20 *Company, et al.*, U.S. District Court, Central District of California, Case No. 2:18-
21 cv-03051 DDP (JCx).

22 2.2 Challenging Party: a Party or Non-Party that challenges the
23 designation of information or items under this Order.

24 2.3 "CONFIDENTIAL" Information or Items: information (regardless
25 of how it is generated, stored or maintained) or tangible things that qualify for
26 protection under Federal Rule of Civil Procedure 26(c), and as specified above
27 in the Good Cause Statement.

28

1 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
2 their support staff).

3 2.5 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL.”

6 2.6 Disclosure or Discovery Material: all items or information, regardless
7 of the medium or manner in which it is generated, stored, or maintained (including,
8 among other things, testimony, transcripts, and tangible things), that are produced or
9 generated in disclosures or responses to discovery in this matter.

10 2.7 Expert: a person with specialized knowledge or experience in a matter
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as
12 an expert witness or as a consultant in this Action.

13 2.8 House Counsel: attorneys who are employees of a party to this Action.
14 House Counsel does not include Outside Counsel of Record or any other outside
15 counsel.

16 2.9 Non-Party: any natural person, partnership, corporation, association, or
17 other legal entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not employees of a
19 party to this Action but are retained to represent or advise a party to this Action and
20 have appeared in this Action on behalf of that party or are affiliated with a law firm
21 which has appeared on behalf of that party, and includes support staff.

22 2.11 Party: any party to this Action, including all of its officers, directors,
23 claims administrators, employees, consultants, retained experts, and Outside
24 Counsel of Record (and their support staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
26 Discovery Material in this Action.

27 2.13 Professional Vendors: persons or entities that provide litigation support
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 **3. SCOPE**

8 The protections conferred by this Order cover not only Protected Material
9 (as defined above), but also (1) any information copied or extracted from Protected
10 Material; (2) all copies, excerpts, summaries, or compilations of Protected
11 Material; and (3) any deposition testimony, conversations, or presentations by
12 Parties or their Counsel that might reveal Protected Material, other than during a
13 court hearing or at trial.

14 Any use of Protected Material during a court hearing or at trial shall be
15 governed by the orders of the presiding judge. This Order does not govern the use
16 of Protected Material during a court hearing or at trial.

17 **4. DURATION**

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

26 **5. DESIGNATING PROTECTED MATERIAL**

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.
28 Each Party or Non-Party that designates information or items for protection under

1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications that qualify so that other portions of the material, documents,
5 items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

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

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

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

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions), that the Producing Party affix
23 at a minimum, the legend "CONFIDENTIAL-- USDC, Central District of
24 California, Case No. 2:18-cv-03051 DDP (JCx)" (hereinafter "CONFIDENTIAL
25 legend"), to each page that contains protected material. If only a portion or
26 portions of the material on a page qualifies for protection, the Producing Party also
27 must clearly identify the protected portion(s) (e.g., by making appropriate
28 markings in the margins).

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

13 (b) for testimony given in depositions such designation shall be made
14 on the record whenever possible, but a Designating Party may designate portions of
15 depositions as containing “CONFIDENTIAL” information after transcription of the
16 proceedings; the Designating Party shall have until fifteen (15) days after receipt of
17 the deposition transcript to inform the Receiving Party or parties to the action of the
18 portions of the transcript designated “CONFIDENTIAL”.

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

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive
27 the Designating Party’s right to secure protection under this Order for such
28 material. Upon timely correction of a designation, the Receiving Party must make

1 reasonable efforts to assure that the material is treated in accordance with the
2 provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time that is consistent with the Court's
6 Scheduling Order.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
8 resolution process under Local Rule 37-1 et seq.

9 6.3 The burden of persuasion in any such challenge proceeding shall be
10 on the Designating Party. Frivolous challenges, and those made for an improper
11 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
12 parties) may expose the Challenging Party to sanctions. Unless the Designating
13 Party has waived or withdrawn the confidentiality designation, all parties shall
14 continue to afford the material in question the level of protection to which it is
15 entitled under the Producing Party's designation until the Court rules on the
16 challenge.

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

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

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

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:
3 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
4 well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this Action;
6 (b) the officers, directors, claims administrators and employees
7 (including House Counsel) of the Receiving Party to whom disclosure is
8 reasonably necessary for this Action;
9 (c) Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this Action and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
12 (d) the court and its personnel;
13 (e) court reporters and their staff;
14 (f) professional jury or trial consultants, mock jurors, and
15 Professional Vendors to whom disclosure is reasonably necessary for this Action
16 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
17 A);
18 (g) the author or recipient of a document containing the information
19 or a custodian or other person who otherwise possessed or knew the information;
20 (h) during their depositions, witnesses, and attorneys for witnesses, in
21 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
22 party requests that the witness sign the “Acknowledgment and Agreement to Be
23 Bound” form attached as Exhibit A hereto; and (2) they will not be permitted to
24 keep any confidential information unless they sign the “Acknowledgment and
25 Agreement to Be Bound” attached as Exhibit A, unless otherwise agreed by the
26 Designating Party or ordered by the court. Pages of transcribed deposition
27 testimony or exhibits to depositions that reveal Protected Material may be
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1 separately bound by the court reporter and may not be disclosed to anyone except
2 as permitted under this Protective Order;

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

5 (j) Auditors, regulators, or reinsurers of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

8 (k) any other person or entity that the Designating Party agrees to in
9 writing.

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

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

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

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

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

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

1 Designating Party shall bear the burden and expense of seeking protection in that
2 court of its confidential material and nothing in these provisions should be
3 construed as authorizing or encouraging a Receiving Party in this Action to
4 disobey a lawful directive from another court.

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

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

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

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

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

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

25 (c) If a Non-Party represented by counsel fails to commence the
26 process called for by Local Rules 45-1 and 37-1, et seq. within 14 days of
27 receiving the notice and accompanying information or fails contemporaneously to
28 notify the Receiving Party that it has done so, the Receiving Party may produce the

1 Non-Party’s confidential information responsive to the discovery request. If an
2 unrepresented Non-Party fails to seek a protective order from this court within 14
3 days of receiving the notice and accompanying information, the Receiving Party
4 may produce the Non-Party’s confidential information responsive to the discovery
5 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
6 not produce any information in its possession or control that is subject to the
7 confidentiality agreement with the Non-Party before a determination by the court
8 unless otherwise required by the law or court order. Absent a court order to the
9 contrary, the Non-Party shall bear the burden and expense of seeking protection in
10 this court of its Protected Material.

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

12 If a Receiving Party learns that, by inadvertence or otherwise, it has
13 disclosed Protected Material to any person or in any circumstance not authorized
14 under this Protective Order, the Receiving Party must immediately (a) notify in
15 writing the Designating Party of the unauthorized disclosures, (b) use its best
16 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
17 person or persons to whom unauthorized disclosures were made of all the terms of
18 this Order, and (d) request such person or persons to execute the
19 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
20 A.

21 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
22 **OTHERWISE PROTECTED MATERIAL**

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other
25 protection, the obligations of the Receiving Parties are those set forth in Federal
26 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
27 whatever procedure may be established in an e-discovery order that provides for
28 production without prior privilege review. Pursuant to Federal Rule of Evidence

1 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
2 of a communication or information covered by the attorney-client privilege or
3 work product protection, the parties may incorporate their agreement into this
4 Protective Order.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections. No Party waives any right it
9 otherwise would have to object to disclosing or producing any information or item
10 on any ground not addressed in this Protective Order. Similarly, no Party waives
11 any right to object on any ground to use in evidence of any of the material covered
12 by this Protective Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
15 orders of the assigned District Judge and Magistrate Judge. If a Party's request to
16 file Protected Material under seal is denied by the court, then the Receiving Party
17 may file the information in the public record unless otherwise instructed by the
18 court.

19 **13. FINAL DISPOSITION**

20 The protections provided to all Protected Material under this Order shall not
21 terminate upon final disposition (as defined in Section 4), but rather shall survive
22 and continue unless otherwise agreed to in writing. Upon final disposition, counsel
23 to this litigation are entitled to retain an archival copy of all pleadings, motion
24 papers, trial, deposition and hearing transcripts, legal memoranda, correspondence,
25 deposition and trial exhibits, expert reports, attorney work product, and consultant
26 and expert work product, even if such materials contain Protected Material. Any
27 such archival copies that contain or constitute Protected Material remain subject to
28 this Protective Order as set forth in Section 4.

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Within 60 days of final disposition of this Action, each Receiving Party shall return all paper copies of all Protected Material to the Producing Party or destroy such material. Relative to the retention by a Receiving Party of Electronically Stored Information (“ESI”) containing Protected Material, such ESI may be retained electronically pursuant to the terms of that Receiving Party’s document retention policies and shall be maintained as confidential pursuant to the terms of this Protective Order as set forth in Section 4.

As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material.

14. VIOLATION

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

IT IS SO ORDERED.

DATED: February 4, 2019

/s/

Honorable Jacqueline Chooljian
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Protective Order that was issued
by the United States District Court for the Central District of California on
February 4, 2019 in the case of *Home Depot, U.S.A., Inc. v. Twin City Fire
Insurance Company, et al.*, U.S. District Court, Central District of California, Case
No. 2:18-cv-03051 DDP (JCx). I agree to comply with and to be bound by all the
terms of this Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____