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THE SHERWIN-WILLIAMS COMPANY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WECO SUPPLY COMPANY, INC., a
 California corporation,

Plaintiff,

v.

THE SHERWIN-WILLIAMS
 COMPANY, an unknown business
 entity, and DOES 1 through 10,
 inclusive,

Defendant.

THE SHERWIN-WILLIAMS
 COMPANY,

Cross-Complainant,

v.

WECO SUPPLY COMPANY, a
 California Corporation; and ROES 1-10,
 inclusive,

Cross-Defendants.

CASE NO. 1:10-CV-00171-OWW-SMS

CTRM: 3

**STIPULATED CONFIDENTIALITY
 AGREEMENT AND PROTECTIVE
 ORDER**

WHEREAS Defendant and Cross-Complainant THE SHERWIN-WILLIAMS
 COMPANY. ("Defendant") and Plaintiff and Cross-Defendant WECO SUPPLY
 COMPANY, INC. ("Plaintiff") (collectively "Parties") anticipate that they may produce

certain "CONFIDENTIAL INFORMATION," as defined below in their responses to written discovery, during deposition testimony, or in response to other requests in the matter captioned Weco Supply Company, Inc., v. The Sherwin-Williams Company, et al. (Case No. 1:10-CV-00171-OWW-SMS) (the "Action"), the parties, through their undersigned counsel, hereby stipulate and agree that the Court may enter a Protective Order based on the following Agreed Confidentiality Stipulation For Entry of Protective Order ("Agreement"), as set forth below:

I. DEFINITIONS

1) "CONFIDENTIAL INFORMATION" shall mean information, recorded, stored, or maintained for any reason in any medium, including but not limited to print, electronic, or digital, that a party designating the information as "Confidential" reasonably believes to fall within one or more of the following categories:

a. "Trade Secrets" as that term is defined by California Civil Code § 3426.1, which provides that a trade secret "means information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

b. Research, development, or commercial information that is of a highly competitive nature and that a reasonably prudent business person in the applicable field would not release or share outside the company in the ordinary course of business.

c. Personal information of third parties, or information concerning third parties, that the designating party, in good faith, believes is protected from disclosure, either in redacted or unredacted form, and that cannot be disclosed under applicable state or Federal law either without appropriate notice to such third parties, or absent order by the Court.

- 1 d. Information received in confidence from third parties.
- 2 e. Information that the producing party otherwise believes in good faith to be
- 3 entitled to protection under this Agreement.

4 2) "DOCUMENT(S)" is a collective reference to any and all material or other

5 tangible things containing information produced by any party in the Action, information

6 produced by a third-party concerning a party to the Action, including written responses

7 to discovery and deposition testimony. Without limitation, DOCUMENT(S) further

8 include(s) any medium by which information is recorded, stored, communicated, or

9 utilized, including papers (of any kind, type, or character) and any method or medium

10 by which information may be communicated, recorded, or retrieved by people or by

11 computers. The word DOCUMENT(S), includes, without limitation, photographs,

12 x-rays, motion pictures, audio tapes, videotape recordings, computer generated material,

13 computer disks, and any other form or type of computer stored or computer retrievable

14 data, microfilm and microfiche, or any other process by which information is reduced

15 for storage, and duplicates and reproductions of the same by any method.

16 3) "Court" refers to the Honorable Oliver W. Wanger and/or any other judge of the

17 United States District Court, Eastern District to whom the Action may be assigned,

18 including Magistrate Judges.

19 **PROCEDURE FOR DETERMINING STATUS OF CONFIDENTIAL**

20 **DOCUMENTS.**

21 1) All DOCUMENTS or categories of DOCUMENTS produced or disclosed that

22 the producing party in good faith believes to contain CONFIDENTIAL

23 INFORMATION that should be subject to this Agreement shall be designated by the

24 producing party as follows:

25 **CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER**

26 **Weco Supply Company, Inc. v. The Sherwin-Williams Company**

27 **United States District Court**

28 **Eastern District of California (Case No. 1:10-CV-00171-OWW-SMS)**

28 ///

1 2) The designation of a DOCUMENT or information as "Confidential" shall not
2 create any presumption with regard to the actual confidentiality of any DOCUMENT,
3 nor shall it affect the burden of proof necessary for obtaining a protective order from the
4 Court. The party designating information, DOCUMENTS, materials or items as
5 "Confidential" bears the burden of establishing their confidentiality if such designation
6 is challenged by a party to this Agreement. Any DOCUMENT with "Confidential"
7 designation whose confidentiality is not challenged shall be automatically deemed
8 subject to this Agreement and the Protective Order entered by the Court.

9 3) If counsel for a party receiving DOCUMENTS designated as Confidential
10 objects to such designation of any or all of such items, the following procedure shall
11 apply:

12 a) Counsel for the objecting party shall serve on the designating party a written
13 objection to such designation, which shall describe with particularity the
14 DOCUMENTS or information in question, and shall state the factual, and
15 to the extent applicable, the general legal grounds for the objection.

16 b) Counsel for the designating party or third party shall respond in writing to
17 such objection within fourteen calendar (14) days, unless a shorter time frame is agreed
18 upon by the parties or ordered by the Court, and shall state with particularity the factual
19 and legal grounds for asserting that the DOCUMENT or information is Confidential.
20 If no timely written response is made to the objection, the challenged designation will
21 be deemed no longer applicable and not subject to the terms of this Agreement.

22 c) If the designating party makes a timely response to such objection asserting
23 the propriety of the designation, counsel shall then meet and confer within seven (7)
24 calendar days of such response, unless a shorter time frame is agreed upon by the parties
25 or ordered by the Court, in good faith in an effort to resolve the dispute.

26 d) If a dispute as to a Confidential designation cannot be resolved by
27 agreement, the person still asserting that the material in question is confidential shall
28 present the dispute to the Court for resolution within ten (10) days after the unsuccessful

1 meet and confer between counsel. The DOCUMENT or information that is the subject
2 of such a filing shall be treated as originally designated pending resolution of the
3 dispute.

4 The party asserting a Confidential designation as to any Document shall have the
5 burden of justifying that designation consistent with California law.

6 4) A Party shall not be obligated to challenge the propriety of the designation of
7 information, DOCUMENTS, materials or items as "Confidential" at the time of
8 production, and failure to do so shall not preclude a subsequent challenge to the
9 designation provided that any challenge to a "Confidential" designation is made not later
10 than one hundred and twenty (120) days after such document is produced. In no event
11 shall the absence of a challenge to a "Confidential" designation be deemed a concession
12 by the receiving Party that the material is entitled to protection from disclosure under
13 applicable law except where such challenge is not made within the time limits set forth
14 in this paragraph.

15 **ORDERS REGARDING CONFIDENTIAL INFORMATION**

16 With regard to DOCUMENTS designated as "Confidential," the foregoing
17 provisions shall be in effect:

18 1) All CONFIDENTIAL INFORMATION shall be used by the receiving party
19 solely for purposes of the prosecution or defense of this Action, shall not be used by the
20 receiving party for any business, commercial, competitive, personal or other purpose,
21 and shall not be disclosed by the receiving party to anyone other than those set forth in
22 Paragraph III(2) below, unless and until the restrictions herein are removed either by the
23 operation of this Agreement, the written agreement of counsel for the Parties, or by
24 order of the Court.

25 2) CONFIDENTIAL INFORMATION may be disclosed only to the following
26 individuals under the following conditions:

27 a. Counsel for the Parties, including Sherwin-Williams' in-house counsel,
28 Matthew Jorgensen;

- 1 b. Outside experts or consultants retained by any party who execute the form
2 attached as Attachment "A" (which shall not be discoverable except upon
3 a showing of good cause);
- 4 c. Secretarial, paralegal, clerical, duplicating and data processing personnel of
5 the foregoing;
- 6 d. The Court and court personnel;
- 7 e. During trial or deposition only, a witness or deponent if it appears that the
8 witness or deponent authored or received a copy of it, was involved in or would have
9 information relevant to the subject matter described therein, or is employed by the party
10 who produced the information, DOCUMENT or thing, or if the producing party
11 consents to such disclosure;
- 12 f. Vendors retained by or for the Parties to assist in preparing for pretrial
13 discovery, trial and/or hearings including, but not limited to, court reporters, litigation
14 support personnel, jury consultants, individuals to prepare demonstrative and
15 audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well
16 as their staff, stenographic, and clerical employees whose duties and responsibilities
17 require access to such materials; and
- 18 3) CONFIDENTIAL INFORMATION shall be used only by individuals permitted
19 access to it under Paragraph III(2). Confidential DOCUMENTS, copies thereof, and the
20 information contained therein, or any CONFIDENTIAL INFORMATION shall not be
21 disclosed in any manner to any other individual, until and unless (a) outside counsel for
22 the party asserting confidentiality waives the claim of confidentiality, or (b) the Court
23 orders such disclosure.
- 24 4) With respect to any depositions that involve a disclosure of Confidential
25 DOCUMENTS or CONFIDENTIAL INFORMATION of a party to this Action, such
26 party shall have until ten (10) days after receipt of the deposition transcript within
27 which to inform all other parties that portions of the transcript of that deposition session
28 are to be designated Confidential, which period may be modified by agreement of the

1 Parties or unless the circumstances otherwise required by order of the Court. No such
2 deposition transcript shall be disclosed to any individual other than the individuals
3 described in Paragraph III(2) above and the deponent during this period of time
4 (although it may be filed under seal as permitted under this Agreement and order of the
5 Court), and no individual attending such a deposition shall disclose the contents of the
6 deposition to any individual other than those described in Paragraph III(2) above during
7 said period of time. Upon being informed that certain portions of a deposition are to be
8 designated as Confidential, all parties shall, upon receiving copies of the deposition
9 transcript, cause each copy of the transcript in its custody or control to be appropriately
10 marked and limit disclosure of that transcript in accordance with the provisions of this
11 Agreement.

12 5) Any party who has received Confidential DOCUMENTS and/or
13 CONFIDENTIAL INFORMATION shall act to preserve the confidentiality of such
14 DOCUMENTS and/or CONFIDENTIAL INFORMATION. Any DOCUMENT that is
15 Confidential, including, without limitation, any deposition transcript, deposition exhibit,
16 pleading, motion, memorandum, deposition notice, interrogatory, request for document
17 production, subpoena, or response to an interrogatory or request for production, or that
18 reproduces, paraphrases, summarizes, or encloses Confidential DOCUMENTS, if filed
19 with the Court, shall be filed under seal in an envelope on which shall be endorsed the
20 title of this action, the nature of the contents of the envelope, the word
21 "CONFIDENTIAL," and the following (or similar) statement:

22 This envelope contains information covered by the AGREED
23 CONFIDENTIALITY STIPULATION FOR ENTRY OF PROTECTIVE
24 ORDER of the Parties date _____ and ORDER of the Court dated
25 _____.

26 6) All papers that that refer to or rely upon DOCUMENTS filed under seal shall
27 designate the particular aspects that are confidential to enable the Court, in drafting
28 orders, to determine whether there is evidence which the Court should attempt not to

1 disclose. Absent such advance notification, the Court will be free to incorporate all such
2 documents and evidence in its written and oral rulings.

3 7) The terms of this Protective Order do not preclude, limit, restrict, or otherwise
4 apply to the use of DOCUMENTS at trial. Any party may move the Court for an order
5 that the CONFIDENTIAL INFORMATION be received in camera or under other
6 conditions to prevent unnecessary disclosure. The Court will then determine whether
7 the proffered CONFIDENTIAL INFORMATION should continue to be treated as
8 Confidential and, if so, what protection, if any, may be afforded such information at the
9 trial.

10 8) This Agreement and Protective Order shall apply to non-parties to this
11 Agreement who are obliged to provide discovery, by deposition, production of
12 documents or otherwise, in this Action if said non-party requests in writing the
13 protection of this Agreement as to said non-party's CONFIDENTIAL INFORMATION,
14 complies with the provisions of this Agreement, and agrees in writing to be bound by
15 the terms of this Agreement.

16 9) To the extent consistent with applicable law, the inadvertent or unintentional
17 disclosure of Confidential DOCUMENTS and/or CONFIDENTIAL INFORMATION
18 that should have been designated as Confidential, regardless of whether the information,
19 DOCUMENT or thing was so designated at the time of disclosure, shall not be deemed
20 a waiver in whole or in part of a party's claim of confidentiality, either as to the specific
21 CONFIDENTIAL INFORMATION, DOCUMENT or thing disclosed or as to any other
22 material or information concerning the same or related subject matter. Such inadvertent
23 or unintentional disclosure may be rectified by notifying in writing counsel for all
24 parties to whom the material was disclosed that the material should have been
25 designated Confidential within a reasonable time after disclosure. Such notice shall
26 constitute a designation of the information, document or thing as Confidential under this
27 Agreement. All parties shall reserve the right to challenge such a designation pursuant
28 to the provisions of this Agreement.

1 10) No information that is in the public domain or which is already known by
2 the receiving party through proper means or which is or becomes available to a party
3 from a source other than the party asserting confidentiality, rightfully in possession of
4 such information on a non-confidential basis, shall be deemed or considered to be
5 Confidential under this Agreement.

6 11) This Agreement shall not deprive any party of its right to object to discovery
7 by any other party or on any otherwise permitted ground. This Agreement is being
8 entered without prejudice to the right of any party to move the Court for modification
9 or for relief from any of its terms.

10 12) In the event that any recipient of Confidential DOCUMENTS and/or
11 CONFIDENTIAL INFORMATION (a) is served with a subpoena or other legal process
12 in another action, or (b) is served with a request or a demand in another action to which
13 he or she is a party, or (c) is served with a request or a demand or any other legal process
14 by one not a party to this Action concerning Confidential DOCUMENTS and/or
15 CONFIDENTIAL INFORMATION, that person (the recipient of Confidential
16 DOCUMENTS) shall give prompt written facsimile and mail notice of such event to:

17 If Document is Designated "Confidential" by The Sherwin-Williams Company:

18 JOSEPH C. OWENS
19 Lewis Brisbois Bisgaard & Smith LLP
20 221 North Figueroa Avenue, Suite 1200
21 Los Angeles, California 90012
22 Facsimile: (213) 250-7900

23 If Document is Designated "Confidential" by Plaintiff:

24 Scott D. Laird, Esq.
25 **JONES HELSLEY PC**
26 265 E. River Park Circle, Suite 310
27 Post Office Box 28340,
28 Fresno, CA 93720
29 Tel: (559) 233-4800
30 Fax: (559) 233-9330

31 Such person shall also object on the basis of this Order to producing or responding to
32 any such request, demand, or subpoena. Within ten (10) days from the giving of such
33 written notice, the designating party shall advise the person who is to respond to the

1 subpoena or request or demand of its position. The designating party shall bear the
2 burden and the expense of seeking protection in that court of its CONFIDENTIAL
3 INFORMATION. Nothing in these provisions should be construed as authorizing or
4 encouraging a party receiving "Confidential" DOCUMENTS in this action to disobey
5 a lawful directive from another court.

6 **GENERAL PROVISIONS**

7 1) This Agreement shall survive the termination of the Action and shall remain in
8 full force and effect unless modified by an order of the Court or by the written
9 stipulation of the Parties filed with the Court.

10 2) Upon final conclusion of this Action, each party or other individual subject to
11 the terms hereof shall, upon notice from the designating party, assemble and return to
12 the designating party or destroy all originals and unmarked copies of DOCUMENTS
13 and things containing CONFIDENTIAL INFORMATION as well as excerpts,
14 summaries and digests revealing CONFIDENTIAL INFORMATION; provided,
15 however, that counsel may retain their work product and complete copies of all
16 transcripts and pleadings including any exhibits attached thereto for archival purposes,
17 subject to the provisions of this Agreement.

18
19 **SO STIPULATED.**

20 DATED: February 2, 2011

**LEWIS BRISBOIS BISGAARD & SMITH
LLP**

21
22 By / s/ Joseph C. Owens
JOSEPH C. OWENS
23 Attorneys for Defendant and Cross-Complainant
THE SHERWIN-WILLIAMS COMPANY

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2 DATED: December __, 2010

JONES HELSLEY PC

3

By /s/ *Scott D. Laird*

4

SCOTT D. LAIRD

5

MELISSA C. SCHMIDT

6

Attorneys for Plaintiff and Cross-Defendant
WECO SUPPLY COMPANY, INC.

7 **IT IS SO ORDERED.**

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9 DATED: February 1, 2011

/s/ OLIVER W. WANGER

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HONORABLE OLIVER W. WANGER
DISTRICT COURT JUDGE

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ATTACHMENT "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WECO SUPPLY COMPANY, INC., a
California corporation,

Plaintiff,

v.

THE SHERWIN-WILLIAMS
COMPANY, an unknown business
entity, and DOES 1 through 10,
inclusive,

Defendant.

THE SHERWIN-WILLIAMS
COMPANY,

Cross-Complainant,

v.

WECO SUPPLY COMPANY, a
California Corporation; and ROES 1-10,
inclusive,

Cross-Defendants.

CASE NO. 1:10-CV-00171-OWW-SMS

CTRM: 3

**AGREEMENT TO BE BOUND BY
TERMS OF AGREED
CONFIDENTIALITY
STIPULATION FOR ENTRY OF
PROTECTIVE ORDER**

I, _____, being duly sworn, state that:

1. My address is _____.

2. My present employer is _____ and the address of my
present employment is _____.

3. I have carefully read and understood the provisions of the STIPULATED
CONFIDENTIALITY AGREEMENT FOR ENTRY OF PROTECTIVE ORDER in this
case and I will comply with all of its provisions.

4. No later than the final conclusion of the case, I will return all Confidential
DOCUMENTS, CONFIDENTIAL INFORMATION, and summaries, abstracts, and
indices thereof which come into my

1 possession, and documents or things which I have prepared relating thereto, to counsel
2 for the party for whom I was employed or retained.

3 I declare under penalty of perjury that the foregoing is true and correct.

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5 Dated: _____ Name _____

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