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18 HOME DEPOT U.S.A., INC.

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**BAKERSFIELD DIVISION**

17 CLYDE GOLDEN,  
18 INDIVIDUALLY AND ON  
19 BEHALF OF ALL OTHERS  
20 SIMILARLY SITUATED

21 Plaintiff,

22 v.

23 HOME DEPOT U.S.A., INC.

24 Defendant.

Case No. 1:18-cv-00033-LJO-JLT

**ORDER APPROVING THE  
AGREED CONFIDENTIALITY  
ORDER**

(Doc. 36)

1 The parties to this Agreed Confidentiality Order (hereinafter “Order”) have  
2 agreed to the terms of this Order; accordingly, it is ORDERED:

3 **1. Scope.** All materials produced or adduced in the course of discovery,  
4 including initial disclosures, responses to discovery requests, deposition testimony  
5 and exhibits, and information derived directly therefrom (hereinafter collectively  
6 “documents”), shall be subject to this Order concerning Confidential Information  
7 as defined below. This Order is subject to the Local Rules of this District and the  
8 Federal Rules of Civil Procedure on matters of procedure and calculation of time  
9 periods.

10 **2. Parties To The Confidentiality Order.** This Order governs the named  
11 plaintiff as well as defendant Home Depot U.S.A., Inc. in the above-captioned  
12 lawsuit (the “Litigation”).

13 **3. Confidential Information.** As used in this Order, “Confidential  
14 Information” shall mean all non-public material which contains or discloses  
15 information relating to, referencing, or pertaining to: proprietary or commercially  
16 sensitive information that could do harm to the designating party’s business  
17 advantage (*e.g.*, marketing documents, business relationships with other parties and  
18 other similar information); research, technical, commercial or financial information  
19 that the party has maintained as confidential; personal information, as defined in  
20 Cal. Civ. Code § 1798.3, or other personally sensitive information; information  
21 received in confidence from third parties; and any other material that is  
22 Confidential pursuant to applicable law. Nothing in this Order shall be deemed to  
23 suggest that any party has any Confidential Information in its possession, custody,  
24 or control; that any Confidential Information in a party’s possession, custody, or  
25 control is subject to disclosure in this proceeding; or that any party waives any  
26 objections to the relevance or admissibility of any Confidential Information  
27 produced by the party.

28 **4. Privileged Material.** “Privileged Material” means any document or

1 information that is, or that the producing party asserts is, protected from disclosure  
2 by a privilege or other immunity from discovery, including, without limitation, the  
3 attorney-client privilege or the work product immunity.

4 **5. Designation.**

5 a. A party may designate a document as Confidential Information for  
6 protection under this Order by placing or affixing the words “CONFIDENTIAL –  
7 SUBJECT TO PROTECTIVE ORDER” on the document and on all copies in a  
8 manner that will not interfere with the legibility of the document. As used in this  
9 Order, “copies” includes electronic images, duplicates, extracts, summaries or  
10 descriptions that contain the Confidential Information. The marking  
11 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall be applied  
12 prior to or at the time that the documents are produced or disclosed. Applying the  
13 marking “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” to a  
14 document does not mean that the document has any status or protection by statute  
15 or otherwise except to the extent and for the purposes of this Order. Any copies  
16 that are made of any documents marked “CONFIDENTIAL – SUBJECT TO  
17 PROTECTIVE ORDER” shall also be so marked, except that indices, electronic  
18 databases or lists of documents that do not contain substantial portions or images  
19 of the text of marked documents and do not otherwise disclose the substance of the  
20 Confidential Information are not required to be marked.

21 b. The designation of a document as Confidential Information is a  
22 certification by an attorney or a party appearing *pro se* that the document contains  
23 Confidential Information as defined in this order.

24 **6. Depositions.**

25 Unless all parties agree on the record at the time the deposition testimony is  
26 taken, all deposition testimony taken in this case shall be treated as Confidential  
27 Information until the thirtieth day after the transcript is delivered to any party or  
28 the witness. Within this time period, a party may serve a Notice of Designation to

1 all parties of record as to specific portions of the testimony that are designated  
2 Confidential Information, and thereafter only those portions identified in the  
3 Notice of Designation shall be protected by the terms of this Order.

4 **7. Protection of Confidential Material.**

5 **a. General Protections.** All Confidential Information exchanged  
6 pursuant to this Order shall be used by the receiving party solely for purposes of  
7 the Litigation, shall not be used by the receiving party for any other purpose, and  
8 shall not be disclosed by the receiving party to anyone other than those identified  
9 in subparagraph (b). In a putative class action, Confidential Information may be  
10 disclosed only to the named plaintiff(s) and not to any other member of the  
11 putative class unless and until a class including the putative member has been  
12 certified.

13 **b. Limited Third-Party Disclosures.** The parties and counsel for the  
14 parties shall not disclose or permit the disclosure of any Confidential Information  
15 to any third person or entity except as set forth in subparagraphs (1)-(9). Subject to  
16 these requirements, the following categories of persons may be allowed to review  
17 Confidential Information:

18 **(1) Counsel.** Counsel for the parties and employees of counsel who  
19 have responsibility for the action;

20 **(2) Parties.** Individual parties and employees of a party but only to  
21 the extent counsel determines in good faith that the employee's  
22 assistance is reasonably necessary to the conduct of the litigation in  
23 which the information is disclosed;

24 **(3) The Court and its personnel;**

25 **(4) Court Reporters and Recorders.** Court reporters and recorders  
26 engaged for depositions;

27 **(5) Litigation Support Services.** Those persons specifically engaged  
28 for the limited purpose of making copies of documents or organizing

1 or processing documents, including outside vendors hired to process  
2 electronically stored documents;

3 **(6) Consultants and Experts.** Consultants, investigators, or experts  
4 employed by the parties or counsel for the parties to assist in the  
5 preparation and trial of this action but only after such persons have  
6 completed the certification contained in Attachment A,  
7 Acknowledgment of Understanding and Agreement to Be Bound.  
8 Copies of the executed Attachment A shall be retained by counsel  
9 disclosing Confidential Information to such person;

10 **(7) Witnesses at depositions.** During their depositions, witnesses in  
11 this action to whom disclosure is reasonably necessary. Witnesses  
12 shall not retain a copy of documents containing Confidential  
13 Information, except witnesses may receive a copy of all exhibits  
14 marked at their depositions in connection with review of the  
15 transcripts. Pages of transcribed deposition testimony or exhibits to  
16 depositions that are designated as Confidential Information pursuant  
17 to the process set out in this Order must be separately bound by the  
18 court reporter and may not be disclosed to anyone except as permitted  
19 under this Order;

20 **(8) Author or recipient.** The author or recipient of the document (not  
21 including a person who received the document in the course of  
22 Litigation);

23 **(9) Mediator or Arbitrator.** Any mediators or arbitrators, including  
24 their necessary staff, engaged by the parties for settlement purposes in  
25 the Litigation; and

26 **(10) Others by Consent.** Other persons only by written consent of the  
27 producing party or upon order of the Court and on such conditions as  
28 may be agreed or ordered.

29 **c. Control of Documents.** Counsel for the parties shall make reasonable  
30 efforts to prevent unauthorized or inadvertent disclosure of Confidential  
31 Information. Counsel shall maintain the originals of the forms signed by persons  
32 acknowledging their obligations under this Order for a period of three years after  
33 the termination of the case.

1       **8. Inadvertent Failure to Designate.**

2           **a.**     This Order is entered pursuant to and invokes the protections of  
3 Federal Rule of Evidence 502(d). Accordingly, the provisions in Rule 502(b) will  
4 not apply to the disclosure of documents or information in this action, other than an  
5 intentional disclosure.

6           **b.**     In accordance with Federal Rule of Evidence 502(d) and other  
7 applicable Rules, any such production or disclosure of Privileged Material other  
8 than the knowing and intentional disclosure of a document or information, shall not  
9 be deemed to waive—in this Litigation or in any other federal or state  
10 proceeding—any applicable privilege or immunity (including, without limitation,  
11 the attorney-client privilege, the work product immunity and the joint defense or  
12 common interest privilege) that would otherwise attach to the disclosed materials  
13 or their subject matter. The parties shall not argue, in this forum or any other, that  
14 any privilege or protection was waived as a result of inadvertent disclosure in this  
15 action, regardless of the procedures used to identify Privileged Material prior to  
16 production.

17           **c.**     If a party identifies discovery material that appears on its face to be  
18 Privileged Material belonging to another party or non-party, the identifying party is  
19 under a good-faith obligation to notify that other party or non-party. Such  
20 notification shall not waive the identifying party’s ability to subsequently contest  
21 any assertion of privilege or protection with respect to the identified discovery  
22 material. If the party or non-party to which the disclosed Privileged Material  
23 belongs wishes to assert a claim of privilege or protection, that party or non-party  
24 shall notify the receiving party of its assertion of privilege within 7 calendar days  
25 of receiving the identifying party’s notification of potentially Privileged Material.  
26 Nothing in this Order limits or otherwise modifies an attorney’s ethical  
27 responsibilities to refrain from examining or disclosing materials that the attorney  
28 knows or reasonably should know to be Privileged Material and to inform the

1 disclosing party that such Privileged Material has been produced.

2 **d.** The provisions of Rule 502(a) of the Federal Rules of Evidence apply  
3 when a party uses Privileged Material to support a claim or defense, when a party  
4 uses Privileged Material during a deposition without the assertion of a  
5 contemporaneous objection, when a party intentionally discloses Privileged  
6 Material to a third party, including the Court (e.g., in connection with or support of  
7 a filing), or whe

8 **e.** n a party makes selective disclosures of documents for any other  
9 purpose. This paragraph does not preclude a party from arguing that waiver was  
10 made under any applicable rule of law.

11 **f.** In addition, to the extent consistent with applicable law, including,  
12 without limitation, Fed.R.Evid 502(d), the inadvertent or unintentional disclosure  
13 of Confidential Information that should have been designated as such, regardless of  
14 whether the information, document or thing was so designated at the time of  
15 disclosure, shall not be deemed a waiver in whole or in part of a party's claim of  
16 confidentiality, either as to the specific information, document or thing disclosed or  
17 as to any other material or information concerning the same or related subject  
18 matter. Such inadvertent or unintentional disclosure may be rectified by notifying  
19 in writing counsel for all parties to whom the material was disclosed and advising  
20 them that the material should have been designated Confidential Information  
21 within a reasonable time after disclosure. Such notice shall constitute a designation  
22 of the information, document or thing, as Confidential Information under this  
23 Order. No party shall be found to have violated this Order for failing to maintain  
24 the confidentiality of material during a time when that material was not designated  
25 Confidential Information, even where the failure to so designate was inadvertent  
26 and where the material is subsequently designated Confidential Information.

27 **9. Filing of Confidential Information.** This Order does not, by itself,  
28 authorize the filing of any document under seal. Any party wishing to file a

1 document designated as Confidential Information in connection with a motion,  
2 brief or other submission to the Court must comply with Local Rule 141(b).

3 **10. No Greater Protection of Specific Documents.** Except on privilege  
4 grounds not addressed by this Order, no party may withhold information from  
5 discovery on the ground that it requires protection greater than that afforded by this  
6 Order unless the party moves for an order providing such special protection.

7 **11. Challenges by a Party to Designation as Confidential Information.** The  
8 designation of any material or document as Confidential Information is subject to  
9 challenge by any party. The following procedure shall apply to any such challenge:

10 **a. Meet and Confer.** A party challenging the designation of  
11 Confidential Information must do so in good faith and must begin the process by  
12 conferring directly with counsel for the designating party. In conferring, the  
13 challenging party must explain the basis for its belief that the confidentiality  
14 designation was not proper and must give the designating party an opportunity to  
15 review the designated material, to reconsider the designation, and, if no change in  
16 designation is offered, to explain the basis for the designation. The designating  
17 party must respond to the challenge within ten (10) business days.

18 **b. Judicial Intervention.** A party that elects to challenge a  
19 confidentiality designation may file and serve a motion that identifies the  
20 challenged material and sets forth in detail the basis for the challenge. Each such  
21 motion must be accompanied by a competent declaration that affirms that the  
22 movant has complied with the meet and confer requirements of this procedure. The  
23 burden of persuasion in any such challenge proceeding shall be on the designating  
24 party. Until the Court rules on the challenge, all parties shall continue to treat the  
25 materials as Confidential Information under the terms of this Order.

26 **12. Action by the Court.** Applications to the Court for an order relating to  
27 materials or documents designated Confidential Information shall be by motion.  
28 Nothing in this Order or any action or agreement of a party under this Order limits



1 the Court's power to make orders concerning the disclosure of documents  
2 produced in discovery or at trial.

3 **13. Use of Confidential Documents or Information at Trial.** Nothing in this  
4 Order shall be construed to affect the use of any document, material, or  
5 information at any trial or hearing. A party that intends to present or that  
6 anticipates that another party may present Confidential Information at a hearing or  
7 trial shall bring that issue to the Court's and the parties' attention by motion or in a  
8 pretrial memorandum without disclosing the Confidential Information. The Court  
9 may thereafter make such orders as are necessary to govern the use of such  
10 documents or information at trial.

11 **14. Confidential Information Subpoenaed or Ordered Produced in Other**  
12 **Litigation.**

13 a. If a receiving party is served with a subpoena, request, or an order  
14 issued in other litigation that would compel disclosure of any material or document  
15 designated in this action as Confidential Information, the receiving party must so  
16 notify the designating party, in writing, immediately and in no event more than  
17 three court days after receiving the subpoena, request, or order. Such notification  
18 must include a copy of the subpoena, request, or court order.

19 b. The receiving party also must immediately inform in writing the party  
20 who caused the subpoena, request, or order to issue in the other litigation that some  
21 or all of the material covered by the subpoena, request, or order is the subject of  
22 this Order. In addition, the receiving party must deliver a copy of this Order  
23 promptly to the party in the other action that caused the subpoena, request, or order  
24 to issue.

25 c. The receiving party shall not be obligated to quash, seek a protective  
26 order or otherwise object to the order, subpoena, or other legal process but shall  
27 cooperate with respect to all reasonable procedures sought to be pursued by the  
28 producing party whose Confidential Information may be affected. Nothing herein

1 shall prevent the receiving party from timely complying with a subpoena served by  
2 a governmental entity or court.

3 **15. Obligations on Conclusion of Litigation.**

4 **a. Order Continues in Force.** Unless otherwise agreed or ordered, this  
5 Order shall remain in force after dismissal or entry of final judgment not subject to  
6 further appeal.

7 **b. Obligations at Conclusion of Litigation.** Upon final termination of  
8 the Litigation, including any and all appeals, counsel for each party shall, upon  
9 request of the producing party, return all Confidential Information to the party that  
10 produced the information within 14 days, including any copies, excerpts and  
11 summaries thereof, or shall destroy same at the option of the receiving party, and  
12 shall purge all such information from all machine-readable media on which it  
13 resides. Notwithstanding the foregoing, counsel for each party may retain all  
14 pleadings, briefs, memoranda, discovery responses, deposition transcripts,  
15 deposition exhibits, expert reports, motions, and other documents filed with the  
16 Court that refer to or incorporate Confidential Information and will continue to be  
17 bound by this Order with respect to all such retained information. Further, attorney  
18 work-product materials that contain Confidential Information need not be  
19 destroyed, but, if they are not destroyed, the person in possession of the attorney  
20 work-product will continue to be bound by this Order with respect to all such  
21 retained information.

22 **c. Deletion of Documents filed under Seal from Electronic Case**  
23 **Filing (ECF) System.** Filings under seal shall be deleted from the ECF system  
24 only upon order of the Court.

25 **16. Order Subject to Modification.** This Order shall be subject to  
26 modification by the Court on its own initiative or on motion of a party or any other  
27 person with standing concerning the subject matter.

28 **17. No Prior Judicial Determination.** This Order is entered based on the

1 representations and agreements of the parties and for the purpose of facilitating  
2 discovery. Nothing herein shall be construed or presented as a judicial  
3 determination that any document or material designated Confidential Information  
4 by counsel or the parties is entitled to protection under Rule 26(c) of the Federal  
5 Rules of Civil Procedure or otherwise until such time as the Court may rule on a  
6 specific document or issue.

7 **18. Persons Bound.** This Order shall take effect when entered and shall be  
8 binding upon all counsel of record and their law firms, the parties, and persons  
9 made subject to this Order by its terms.

IT IS SO ORDERED.

Dated: April 9, 2019

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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AGREED CONFIDENTIALITY ORDER

# Attachment A

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BAKERSFIELD DIVISION**

CLYDE GOLDEN,  
INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS  
SIMILARLY SITUATED

Plaintiff,

v.

HOME DEPOT U.S.A., INC.

Defendant.

Case No. 1:18-cv-00033-LJO-JLT

**ACKNOWLEDGMENT OF  
UNDERSTANDING AND  
AGREEMENT TO BE BOUND**

1 I, \_\_\_\_\_, being duly sworn, state that:

2 1. My address is \_\_\_\_\_.

3 2. My present employer is \_\_\_\_\_ and the  
4 address of my present employment is \_\_\_\_\_.

5 3. My present occupation or job description is \_\_\_\_\_.

6 4. I have carefully read and understood the provisions of the Agreed  
7 Confidentiality Order in this case signed by the Court, and I will comply with all  
8 provisions of the Agreed Confidentiality Order.

9 5. I will hold in confidence and not disclose to anyone not qualified  
10 under the Agreed Confidentiality Order any Confidential Information or any  
11 words, summaries, abstracts, or indices of Confidential Information disclosed to  
12 me.

13 6. I will limit use of Confidential Material disclosed to me solely for  
14 purpose of this action.

15 7. No later than the final conclusion of the case, I will return all  
16 Confidential Information and summaries, abstracts, and indices thereof which  
17 come into my possession, and documents or things which I have prepared relating  
18 thereto, to counsel for the party for whom I was employed or retained.

19 8. I agree to submit myself to the personal jurisdiction of the District  
20 Court for the Eastern District of California in connection with any proceeding  
21 concerning the Agreed Confidentiality Order.

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

23 Dated: \_\_\_\_\_

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\_\_\_\_\_  
[Name]