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7 BROAN-NUTONE LLC and HOME DEPOT
U.S.A, INC.

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 FIRE INSURANCE EXCHANGE,

12 Plaintiff,

13 v.

14 BROAN-NUTONE LLC, HOME DEPOT
U.S.A., INC., and DOES One
15 Through Twenty, Inclusive,,

16 Defendants.

Case No. 2:16-CV-02613-WBS-CKD

**PARTIES' STIPULATED
PROTECTIVE ORDER; ORDER
THEREON**

The Hon. William B. Shubb

17
18 Plaintiff FIRE INSURANCE EXCHANGE and Defendants BROAN-NUTONE
19 LLC, HOME DEPOT U.S.A., INC., through their respective counsel of record herein and
20 hereinafter collectively referred to as "the Parties," hereby enter into this Stipulated
21 Protective Order.

22 1. PURPOSES AND LIMITATIONS

23 Disclosure and discovery activity in this action are likely to involve production of
24 confidential, proprietary, or private information for which special protection from public
25 disclosure and from use for any purpose other than prosecuting this litigation may be
26 warranted. Accordingly, the Parties hereby stipulate to and petition the court to enter the
27 following Stipulated Protective Order. The Parties acknowledge that this Order does not
28 confer blanket protections on all disclosures or responses to discovery and that the

1 protection it affords from public disclosure and use extends only to the limited information
2 or items that are entitled to confidential treatment under the applicable legal principles.
3 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
4 Protective Order does not entitle them to file confidential information under seal; Civil
5 Local Rule 141 sets forth the procedures that must be followed and the standards that will
6 be applied when a party seeks permission from the court to file material under seal.

7 **2. DEFINITIONS**

8 2.1 Challenging Party: A Party or Non-Party that challenges the designation of
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: Information (regardless of how it
11 is generated, stored or maintained) or tangible things that qualify for protection under
12 Federal Rule of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
14 (as well as their support staff).

15 2.4 Designating Party: A Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

17 2.5 Disclosure or Discovery Material: All items or information, regardless of the
18 medium or manner in which it is generated, stored, or maintained (including, among other
19 things, testimony, transcripts, and tangible things), that are produced or generated in
20 disclosures or responses to discovery in this matter.

21 2.6 Expert: A person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
23 expert witness or as a consultant in this action.

24 2.7 House Counsel: Attorneys who are employees of a party to this action.
25 House Counsel does not include Outside Counsel of Record or any other outside counsel.

26 2.8 Non-Party: Any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

28 2.9 Outside Counsel of Record: Attorneys who are not employees of a party to

1 this action but are retained to represent or advise a party to this action and have appeared
2 in this action on behalf of that party or are affiliated with a law firm which has appeared on
3 behalf of that party.

4 2.10 Party: Any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their support
6 staffs).

7 2.11 Producing Party: A Party or Non-Party that produces Disclosure or
8 Discovery Material in this action.

9 2.12 Professional Vendors: Persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
12 their employees and subcontractors.

13 2.13 Protected Material: Any Disclosure or Discovery Material that is designated
14 as “CONFIDENTIAL.”

15 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected
19 Material (as defined above), but also (1) any information copied or extracted from
20 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
21 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
22 that might reveal Protected Material. However, the protections conferred by this
23 Stipulation and Order do not cover the following information: (a) any information that is
24 in the public domain at the time of disclosure to a Receiving Party or becomes part of the
25 public domain after its disclosure to a Receiving Party as a result of publication not
26 involving a violation of this Order, including becoming part of the public record through
27 trial or otherwise; and (b) any information known to the Receiving Party prior to the
28 disclosure or obtained by the Receiving Party after the disclosure from a source who

1 obtained the information lawfully and under no obligation of confidentiality to the
2 Designating Party. Any use of Protected Material at trial shall be governed by a separate
3 agreement or order.

4 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

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

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that
21 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
22 to unnecessarily encumber or retard the case development process or to impose
23 unnecessary expenses and burdens on other parties) expose the Designating Party to
24 sanctions. If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or

1 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
2 must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected
7 material. If only a portion or portions of the material on a page qualifies for protection, the
8 Producing Party also must clearly identify the protected portion(s) (e.g., by making
9 appropriate markings in the margins). A Party or Non-Party that makes original
10 documents or materials available for inspection need not designate them for protection
11 until after the inspecting Party has indicated which material it would like copied and
12 produced. During the inspection and before the designation, all of the material made
13 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party
14 has identified the documents it wants copied and produced, the Producing Party must
15 determine which documents, or portions thereof, qualify for protection under this Order.
16 Then, before producing the specified documents, the Producing Party must affix the
17 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
18 portion or portions of the material on a page qualifies for protection, the Producing Party
19 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
20 the margins).

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
22 the Designating Party identify on the record, before the close of the deposition, hearing, or
23 other proceeding, all protected testimony.

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

1 portion(s).

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

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality
3 under Civil Local Rule 141 within 21 days of the initial notice of challenge or within 14
4 days of the parties agreeing that the meet and confer process will not resolve their dispute,
5 whichever is earlier. Each such motion must be accompanied by a competent declaration
6 affirming that the movant has complied with the meet and confer requirements imposed in
7 the preceding paragraph. Failure by the Designating Party to make such a motion
8 including the required declaration within 21 days (or 14 days, if applicable) shall
9 automatically waive the confidentiality designation for each challenged designation. In
10 addition, the Challenging Party may file a motion challenging a confidentiality designation
11 at any time if there is good cause for doing so, including a challenge to the designation of a
12 deposition transcript or any portions thereof. Any motion brought pursuant to this
13 provision must be accompanied by a competent declaration affirming that the movant has
14 complied with the meet and confer requirements imposed by the preceding paragraph.

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

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this case only
26 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
27 may be disclosed only to the categories of persons and under the conditions described in
28 this Order. When the litigation has been terminated, a Receiving Party must comply with

1 the provisions of section 13 below (FINAL DISPOSITION). Protected Material must be
2 stored and maintained by a Receiving Party at a location and in a secure manner that
3 ensures that access is limited to the persons authorized under this Order.

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

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to
9 disclose the information for this litigation and who have signed the “Acknowledgment and
10 Agreement to Be Bound” that is attached hereto as Exhibit A;

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

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

17 (d) the court and its personnel;

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

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

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

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

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

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

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

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

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

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
23 THIS LITIGATION

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

1 (b) In the event that a Party is required, by a valid discovery request, to produce a
2 Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential information,
4 then the Party shall:

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

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

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

12 (c) If the Non-Party fails to object or seek a protective order from this court within
13 14 days of receiving the notice and accompanying information, the Receiving Party may
14 produce the Non-Party's confidential information responsive to the discovery request. If
15 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
16 information in its possession or control that is subject to the confidentiality agreement with
17 the Non-Party before a determination by the court. Absent a court order to the contrary,
18 the Non-Party shall bear the burden and expense of seeking protection in this court of its
19 Protected Material.

20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the
24 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
25 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
26 unauthorized disclosures were made of all the terms of this Order, and (d) request such
27 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
28 attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to disclosing
17 or producing any information or item on any ground not addressed in this Stipulated
18 Protective Order. Similarly, no Party waives any right to object on any ground to use in
19 evidence of any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. Without written permission from the Designating
21 Party or a court order secured after appropriate notice to all interested persons, a Party may
22 not file in the public record in this action any Protected Material. A Party that seeks to file
23 under seal any Protected Material must comply with Civil Local Rule 141. Protected
24 Material may only be filed under seal pursuant to a court order authorizing the sealing of
25 the specific Protected Material at issue. Pursuant to Civil Local Rule 141, a sealing order
26 will issue only upon a request establishing that the Protected Material at issue is privileged,
27 protectable as a trade secret, or otherwise entitled to protection under the law. If a
28 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule

1 141 is denied by the court, then the Receiving Party may file the information in the public
2 record pursuant to Civil Local Rule 141 unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: April 28, 2017

HAIGHT BROWN & BONESTEEL LLP

By: _____

Krsto Mijanovic
Stephen J. Squillario
Attorneys for Defendants
BROAN-NUTONE LLC and HOME DEPOT
U.S.A, INC.

April __, 2017

AUDLEY & AUDLEY

By: _____

Michael R. Audley
Attorneys for Plaintiff
FIRE INSURANCE EXCHANGE

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May 1, 2017



CAROLYN K. DELANEY
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 Stipulated Protective Order that was issued by the
United States District Court for the Northern District of California on [date] in the case of
Fire Insurance Exchange v. Broan-Nutone LLC, et al. (Case No. 2:16-CV-02613-WBS-
CKD). I agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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
Northern District of California for the purpose of enforcing the terms of this Stipulated
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 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____