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

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14

15 FIRE INSURANCE EXCHANGE,

16 Plaintiff,

17 v.

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

20 Defendants.
21

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

**PARTIES’ STIPULATED JOINT
REQUEST RE: MODIFYING THE PRE-
TRIAL SCHEDULING ORDER & ORDER
THEREON**

The Hon. William B. Shubb

Magistrate Judge Carolyn K. Delaney

22 TO THE HONORABLE COURT, because the parties believe, in good faith, that
23 modification to the Pre-Trial Scheduling Order (ECF No. 8) is necessary to avoid prejudice and to
24 promote the ends of justice, this Joint Stipulation and *ex parte* request to modify the Pre-Trial
25 Scheduling Order, pursuant to Federal Rule of Civil Procedure 16(b)(4), is made by and between
26 Plaintiff Fire Insurance Exchange (“Plaintiff”) and Defendants Broan-Nutone LLC, and Home Depot
27 U.S.A., Inc. (collectively “Defendants”) (together, Plaintiff and Defendants are sometimes referred to
28 as the “Parties”), by and through their respective counsel of record, and with reference to the

1 following facts:

2 **WHEREAS**, Plaintiff alleges that on or about October 11, 2013, a fire occurred causing
3 substantial damage to its insureds' home. As a result, Plaintiff allegedly paid \$428,542.17 to remedy
4 the damage caused by the fire and now, in subrogation, are seeking recovery of this amount from
5 Defendants on the theory that the fire was caused by the product – *i.e.*, a ceiling fan with a
6 replacement motor installed by Plaintiff's insureds – manufactured and/or sold by Defendants.
7 Plaintiff initially filed its Complaint in the Superior Court of California, County of Solano.

8 **WHEREAS**, on or about November 2, 2016, Defendants removed this matter to this Court
9 based on diversity of citizenship.

10 **WHEREAS**, on or about March 8, 2017, this Court issued its Pre-Trial Scheduling Order
11 (ECF No. 8), setting forth the following deadlines and dates:

- 12 1. Initial disclosures to be exchanged by April 10, 2017;
- 13 2. Disclosure of experts and reports by August 10, 2017;
- 14 3. Disclosure of supplemental experts and reports by September 8, 2017;
- 15 4. All other discovery shall be completed by January 1, 2018;
- 16 5. All motions, except motions for continuances, temporary restraining orders, or other
17 emergency applications, shall be filed on or before March 1, 2018;
- 18 6. Pre-Trial Conference is set for May 7, 2018; and
- 19 7. Trial is set for July 10, 2018.

20 **WHEREAS**, since this matter was removed to this Court, the Parties have exchanged written
21 discovery and documents and have been engaged in good faith efforts to resolve various discovery
22 disputes in an effort to avoid consuming Court resources and protracted litigation. However, and as a
23 result, the pace of discovery has been relatively slow.

24 **WHEREAS**, on June 1, 2017, the Parties conducted a joint inspection of the subject fan.

25 **WHEREAS**, the Parties anticipate serving additional written discovery, and multiple
26 percipient witness depositions will be necessary and relevant to aid the Parties' respective retained
27 experts in formulating their analysis as to the disputed issues in this matter. Thus far, the following
28 depositions have been noticed: (1) Plaintiff's insureds David Tubb (who installed the replacement

1 motor in the subject fan) and Linda Tubb on August 2, 2017; (2) Plaintiff's insureds' daughter Ashley
2 Tubb (who was living at the residence at the time of the fire) on August 7, 2017; (3) Person Most
3 Qualified of the Fairfield Fire Department (which responded to the fire) on August 16, 2017; and (4)
4 Person Most Qualified of DH Construction (which performed the repair work on the insureds' home)
5 on August 17, 2017. Additional depositions, including, but not limited to, Plaintiff's Person Most
6 Qualified and its adjuster who handled the claim, are anticipated.

7 **THEREFORE**, the Parties, believing in good faith that disclosure of experts and reports, as
8 well as supplemental experts and reports, should be exchanged after the close of discovery on January
9 1, 2018 to avoid prejudice to the Parties and to further the ends of justice, hereby stipulate, and
10 respectfully request that this Court enter an order so modifying the Scheduling Order (ECF No. 8) as
11 follows:

- 12 1. The Parties shall disclose experts and produce reports in accordance with Federal Rule
13 of Civil Procedure 26(a)(2) by no later than February 5, 2018; and
- 14 2. With regard to expert testimony intended solely for rebuttal, those experts shall be
15 disclosed and reports produced in accordance with Federal Rule of Civil Procedure
16 26(a)(2) on or before February 26, 2018.

17
18 Dated: July 28, 2017

HAIGHT BROWN & BONESTEEL LLP

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20
21 By: _____

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

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25 Dated: July 28, 2017

AUDLEY & AUDLEY

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28 By: _____

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Michael R. Audley
Attorney for Plaintiff
FIRE INSURANCE EXCHANGE

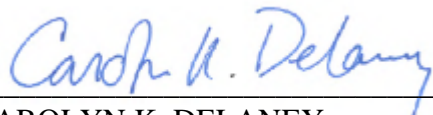
ORDER

COMES NOW, the Parties’ Stipulated Joint Request Re: Modifying The Pre-Trial Scheduling Order came before this Court on July 26, 2017. Having found good cause to modify the Pre-Trial Scheduling Order (ECF No. 8), as set forth in the Parties’ stipulation, this Court orders and modifies the Pre-Trial Scheduling Order as follows:

1. The Parties shall disclose experts and produce reports in accordance with Federal Rule of Civil Procedure 26(a)(2) by no later than February 5, 2018; and
2. With regard to expert testimony intended solely for rebuttal, those experts shall be disclosed and reports produced in accordance with Federal Rule of Civil Procedure 26(a)(2) on or before February 26, 2018.

IT IS SO ORDERED.

Dated: August 1, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE