

1 not entitle them to file confidential information under seal; Local Rule 141.1 sets forth the procedures
2 that must be followed and the standards that will be applied when a party seeks permission from the
3 court to file material under seal.

4 B. GOOD CAUSE STATEMENT

5 This action is likely to involve trade secrets, and other valuable research, development,
6 commercial, financial, technical and/or proprietary information for which special protection from
7 public disclosure and from use for any purpose other than prosecution of this action is warranted.
8 Such confidential and proprietary materials and information includes Werner Co.'s ladder
9 engineering drawings and test reports. A court-ordered protective order for such private, proprietary
10 information is justified in this matter (as opposed to a private agreement between or among the
11 parties) to expedite the flow of information, to facilitate the prompt resolution of disputes over
12 confidentiality of discovery materials, to adequately protect information the parties are entitled to
13 keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material
14 in preparation for and in the conduct of trial, to address their handling at the end of the litigation,
15 and serve the ends of justice.

16 It is the intent of the parties that information will not be designated as confidential for tactical
17 reasons and that nothing be so designated without a good faith belief that it has been maintained in a
18 confidential, non-public manner, and there is good cause why it should not be part of the public
19 record of this case.

20 2. DEFINITIONS

21 2.1 Action: This pending federal lawsuit, *Robert Villalobos, et al. v Home Depot*
22 *U.S.A., Inc., et al.*, Case No. 2:20-cv-02251-WBS-CKD.

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

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

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

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

5 2.6 Disclosure or Discovery Material: All items or information, regardless of the medium
6 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
7 transcripts, and tangible things), that are produced or generated in disclosures or responses to
8 discovery in this matter.

9 2.7 Expert: A person with specialized knowledge or experience in a matter pertinent to
10 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
11 consultant in this Action.

12 2.8 House Counsel: Attorneys who are employees of a party to this Action. House
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.9 Non-Party: Any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: Attorneys who are not employees of a party to this
17 Action but are retained to represent or advise a party to this Action and have appeared in this Action
18 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party
19 and includes support staff.

20 2.11 Party: Any party to this Action, including all of its officers, directors, employees,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.12 Producing Party: A Party or Non-Party that produces Disclosure or discovery Material
23 in this Action.

24 2.13 Professional Vendors: Persons or entities that provide litigation support services (e.g.,
25 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
26 storing, or retrieving data in any form or medium) and their employees and subcontractors.

27 2.14 Protected Material: Any Disclosure or Discovery Material that is designated as
28 “CONFIDENTIAL.”

1 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected Material (as
5 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
6 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Stipulation and Order do not cover the following
9 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
10 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
11 publication not involving a violation of this Order, including becoming part of the public record
12 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
14 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
15 Protected Material at trial shall be governed by a separate agreement or order.

16 4. DURATION

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

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under this Order
26 must take care to limit any such designation to specific material that qualifies under the appropriate
27 standards. The Designating Party must designate for protection only those parts of material,
28 documents, items, or oral or written communications that qualify so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
12 Discovery Material that qualifies for protection under this Order must be clearly so designated before
13 the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but
16 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
17 Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
18 “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or
19 portions of the material on a page qualifies for protection, the Producing Party also must clearly
20 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection need not designate
22 them for protection until after the inspecting Party has indicated which documents it would like
23 copied and produced. During the inspection and before the designation, all of the material made
24 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must determine which
26 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
27 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
28 that contains Protected Material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party identify the Disclosure or
4 Discovery Material on the record, before the close of the deposition all protected testimony.

5 (c) for information produced in some form other than documentary and for any other tangible
6 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
7 in which the information is stored the legend "CONFIDENTIAL." If only a portion or portions of
8 the information warrants protection, the Producing Party, to the extent practicable, shall identify the
9 protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the Designating Party's right
12 to secure protection under this Order for such material. Upon timely correction of a designation, the
13 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
14 the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
19 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
20 confidentiality designation by electing not to mount a challenge promptly after the original
21 designation is disclosed.

22
23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
24 by providing written notice of each designation it is challenging and describing the basis for each
25 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
26 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
27 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
28 begin the process by conferring directly (in voice to voice dialogue; other forms of communication

1 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party
2 must explain the basis for its belief that the confidentiality designation was not proper and must give
3 the Designating Party an opportunity to review the designated material, to reconsider the
4 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
5 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
6 has engaged in this meet and confer process first or establishes that the Designating Party is unwilling
7 to participate in the meet and confer process in a timely manner.

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
9 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
10 Local Rule 141.1 within 21 days of the initial notice of challenge or within 14 days of the parties
11 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each
12 such motion must be accompanied by a competent declaration affirming that the movant has
13 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the
14 Designating Party to make such a motion including the required declaration within 21 days (or 14
15 days, if applicable) shall automatically waive the confidentiality designation for each challenged
16 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
17 designation at any time if there is good cause for doing so, including a challenge to the designation
18 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
19 be accompanied by a competent declaration affirming that the movant has complied with the meet
20 and confer requirements imposed by the preceding paragraph.

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

28 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
2 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
3 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the
4 categories of persons and under the conditions described in this Order. When the Action has been
5 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
6 DISPOSITION).

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

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
10 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
11 any information or item designated “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees
13 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
14 this Action;

15 (b) the officers, directors, and employees (including House Counsel) of the Receiving
16 Party to whom disclosure is reasonably necessary for this Action;

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

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom
23 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and
24 Agreement to Be Bound” (Exhibit A);

25 (g) the author or recipient of a document containing the information or a custodian or other
26 person who otherwise possessed or knew the information;

27 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom
28 disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the

1 form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential
2 information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
3 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
4 testimony or exhibits to depositions that reveal Protected Material may be separately bound by the
5 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective
6 Order; and

7 (i) any mediator or settlement officer, and their supporting personnel, mutually agreed
8 upon by any of the parties engaged in settlement discussions.

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

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

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

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

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

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

28

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

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

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

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

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

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

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

25 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
27 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
28 the Receiving Party must immediately (a) notify in writing the Designating Party of the

1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
2 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
3 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment
4 and Agreement to Be Bound” that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
6 MATERIAL

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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
17 its modification by the Court in the future.

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

23 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material
24 must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to
25 a court order authorizing the sealing of the specific Protected Material at issue. If a Receiving Party's
26 request to file Protected Material under seal is denied by the court, then the Receiving Party may file
27 the information in the public record unless otherwise instructed by the court.

28 13. FINAL DISPOSITION

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

16
17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 Dated: February 17, 2021

CUNNINGHAM SWAIM, LLP

19
20
21 By: /s/ Michael J. Terhar
Michael J. Terhar, Esq.
Jonathan E. Hembree, Esq.
Attorneys for Defendants,
22 WERNER CO. erroneously sued and
23 served as “WERNERCO LLC”) and
24 HOME DEPOT U.S.A., INC.

25 Dated: February 17, 2021

CUTTER LAW P.C.

26
27 By: /s/ John G. Roussas
John G. Roussas, Esq.
28 C. Brooks Cutter, Esq.
Attorneys for Plaintiffs,

ROBERT VILLALOBOS and MARIE
VILLALOBOS

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: February 17, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, 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 Central District of California on [date] in the case of *Timothy Marlowe v. Delta Air Lines, et al*, 2:18-cv-02569-DMG-AFM. 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 Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ 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: _____