

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COLEMAN CABLE, INC.,

Plaintiff,

v.

TDE, INC., a defunct Washington Corporation,
and MONTE A. LEEN,

Defendants.

NO. 2:12-cv-01243-RSL

SECOND DISCOVERY ORDER AND
PROTECTIVE ORDER

WHEREAS, in this action, plaintiff seeks, inter alia, indemnification from defendants for costs, expenses and attorney’s fees expended to defend and resolve certain litigation and/or disputes that have not yet resulted in the initiation of formal litigation, and which are more further identified in the Complaint (hereafter the “Underlying Matters”); and

WHEREAS, defendants seek discovery of confidential settlement correspondence, mediation memoranda and related documents generated in the Underlying Matters (the “Settlement Materials”) for the stated purpose of determining whether those matters arise from or result from liabilities of TDE, Inc., directly or indirectly, and/or are based upon, or arise out of, the operation of the business of TDE, Inc.; and

WHEREAS, defendants also seek discovery of confidential contractual agreements between plaintiff and The Home Depot, including Supplier Buying Agreements which identify

SECOND DISCOVERY ORDER AND PROTECTIVE ORDER - 1
(2:12-cv-01243-RSL)

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1 themselves as documents containing confidential information of The Home Depot (the “Home
2 Depot Contracts”), for the stated purpose of determining whether the Underlying Matter
3 identified in the complaint as The Home Depot Indemnity Claim arises from or results from
4 liabilities of TDE, Inc., directly or indirectly, and/or is based upon, or arises out of, the
5 operation of the business of TDE, Inc.; and

6 WHEREAS, plaintiff asserts that the Settlement Materials and the Home Depot
7 Contracts contain confidential information, including but not limited to proprietary contract
8 information which, if disclosed to third parties would be or could be prejudicial to plaintiff
9 and/or The Home Depot; and

10 WHEREAS, plaintiff has objected to defendants’ requests for production of the
11 Settlement Materials and the Home Depot Contracts, but has agreed to withdraw its objections
12 and produce the Settlement Materials and the Home Depot Contracts subject to a court order
13 which protects their confidential nature and safeguards against disclosure thereof to third
14 parties; and

15 WHEREAS, the Court agrees that the protection and safeguards desired by plaintiff and
16 set forth below are reasonable and justified,

17 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

18 1. This Stipulated Protective Order shall apply to all confidential Settlement
19 Materials produced by plaintiff to defendants in this action (“Confidential Information”).

20 2. All documents or discovery responses designated and labeled by plaintiff as
21 “Confidential” and which are disclosed or produced to defendants in this action are entitled to
22 confidential treatment as described below.

23 3. Plaintiff’s production of Confidential Information does not constitute a waiver
24 of either party’s right to object to the admissibility of the Confidential Information or
25 defendants’ right to dispute the confidential nature of the document.

1 4. Defendants agree to maintain the confidentiality of the Confidential
2 Information, which shall be used by defendants solely for purposes of this action and shall not
3 be used or disclosed for any other purpose whatsoever.

4 5. Confidential Information shall be made available by defendants only to
5 Qualified Persons (as defined at paragraph 6 of this Order).

6 6. “Qualified Person” means:

7 a. The Court and court personnel necessary to assist the Court in the execution of
8 its functions in this action;

9 b. Defendant Monte Leen, individually, and in his capacity as corporate
10 representative of defendant TDE, Inc.;

11 c. Defendants’ counsel of record in this action, and employees of such counsel to
12 whom it is necessary that the Confidential Information be disclosed for purposes of acting in
13 this action;

14 d. A deponent in this lawsuit, during the course of his or her examination, who
15 authored or was otherwise responsible for the creation of the Confidential Information; and
16

17 e. Any other person who is designated as a Qualified Person by subsequent Court
18 order of or by written agreement of the parties.

19 7. Prior to the disclosure of any of the materials or information covered by this
20 Protective Order to persons identified in paragraph 6 of this Protective Order, the attorney
21 permitting disclosure shall obtain the receiving person’s signature on a copy of this Protective
22 Order, indicating his or her name, business address, and phone number, and a statement by the
23 person written on or attached to the Protective Order that recites “I have read this Protective
24 Order, agree to be bound by its terms, and agree to submit to the jurisdiction of this Court for
25 enforcement of the Protective Order.” A copy of each such signed Protective Order shall be

1 maintained by the counsel who permitted disclosure. This provision does not apply to the
2 Court or its personnel.

3 8. Documents may be designated as “Confidential Information” by marking each
4 document “CONFIDENTIAL.” Any copies made of Confidential Information produced in this
5 action by plaintiff shall retain and display the “CONFIDENTIAL” mark or stamp.

6 9. Plaintiff shall designate as “Confidential” only such documents that it in good
7 faith believes contain Confidential Information. Designation of information as Confidential
8 Information may be challenged by defendants as follows:

9 a. If defendants disagree with a designation of a document as Confidential,
10 they shall submit to plaintiff an objection, which can be made at any time, and the
11 parties shall try first to resolve such dispute in good faith on an informal basis.

12 b. If the dispute cannot be so resolved within 10 days of plaintiff’s receipt
13 of defendants’ objection, appropriate relief may be sought from the Court.

14 c. All Confidential Information is entitled to confidential treatment
15 pursuant to the terms of this Order until and unless the parties agree in writing to the contrary
16 or a contrary determination is made by the Court as to whether all or a portion of the
17 Confidential Information is entitled to confidential treatment.

18 10. To the extent that Confidential Information is to be used in depositions, such
19 information shall remain subject to the provisions of this Order, along with the transcript pages
20 of the deposition testimony referring to the Confidential Information. A party may designate
21 deposition testimony as confidential by so advising the parties during the deposition and
22 confirming in writing within 7 days of receipt of the deposition transcript. If testimony is
23 designated as confidential or Confidential Information is the subject of the deposition
24 testimony, the Court Reporter shall bind the Confidential Information separately from the
25 remainder of the deposition transcript and exhibits.

1 11. Any court reporter or transcriber who reports or transcribes testimony in this
2 action shall agree that all Confidential Information designated as such under this Order shall
3 remain confidential and shall not be disclosed by them, except pursuant to the terms of this
4 Order, and that any notes or transcriptions of such testimony (and any accompanying exhibits)
5 will be retained by the reporter or delivered to counsel of record.

6 12. In the event that before trial in this action, counsel for any party determines to
7 submit to the Court any Confidential Information, such party shall redact all Confidential
8 Information before submission to the Court. In the event that redaction is impossible, such
9 party shall file a motion to file the Confidential Information under seal pursuant to Local Rule
10 CR 5(g). If the underlying motion and accompanying affidavits and/or exhibits contain
11 Confidential Information, both the motion and the affidavits and/or exhibits must be filed under
12 seal. The Confidential Information shall remain confidential while the motion is pending,
13 consistent with CR 5(g).

14 13. The inadvertent or unintentional disclosure of Confidential Information,
15 regardless of whether the information was so designated at the time of disclosure, shall not be
16 deemed a waiver in whole or in part of a claim of confidentiality or privilege, either as to
17 specific information disclosed or as to any other information relating thereto or the same or
18 related subject matter.


19 14. Plaintiff shall give notice promptly following the discovery of any inadvertent
20 disclosure, and defendants shall, following receipt of such notice, take all reasonable steps to
21 preserve the confidentiality of the information against further disclosure or dissemination.

22 15. Within 30 days of the conclusion of this action by settlement, judgment, or
23 exhaustion of all appeals, each original and every copy of each document which contains
24 Confidential Information shall either be returned to plaintiff or destroyed. This provision does
25 not apply to documents filed with the Court.

1 16. After termination of this litigation, the provisions of this Order shall continue to
2 be binding, except with respect to those documents and information that become a matter of
3 public record. This Court retains and shall have continuing jurisdiction over the parties and
4 recipients of the Confidential Information for enforcement of the provisions of this Order
5 following termination of this litigation.

6 17. This Order shall be binding upon the parties and their attorneys, successors,
7 executors, personal representatives, administrators, heirs, legal representatives, assigns,
8 subsidiaries, divisions, employees, agents, independent contractors, and other persons or
9 organizations over which they have control.

10 DATED this 8th day of April, 2013.

11 

12 Robert S. Lasnik
13 United States District Judge

14
15 Approved for Entry:

16 *Attorneys for Plaintiff*

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18 /s Mark S. Davidson

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25 SECOND DISCOVERY ORDER AND PROTECTIVE ORDER - 6
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