

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

**IN RE: INTERIOR MOLDED DOORS  
ANTITRUST LITIGATION**

**Lead Civil Action No. 3:18-cv-00718-JAG**

**IN RE: INTERIOR MOLDED DOORS  
INDIRECT PURCHASER ANTITRUST  
LITIGATION**

**Lead Civil Action No. 3:18-cv-00850-JAG**

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**STIPULATED PROTECTIVE ORDER**

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WHEREAS, the Parties, as defined below, stipulate and agree that some of the materials to be produced and exchanged and the testimony to be given during the course of discovery may contain confidential and highly confidential information pertaining to trade secrets and other proprietary business information that could prove harmful to the Parties if disseminated or published;

WHEREAS, counsel for the Parties in the above-referenced actions (together, the “Actions”) hereby submit this proposed stipulated protective order in order to expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that such protection is afforded only to material so entitled.

Accordingly, pursuant to Federal Rule of Civil Procedure 26(c), the following provisions shall govern the handling of Disclosure or Discovery Material, as defined in Paragraph 1.2 below.

**1. DEFINITIONS.**

1.1 Party or Parties: any named party to the Actions, including officers, directors, and employees. For the avoidance of any doubt, “Parties” does not include members of the proposed class other than the named plaintiffs in the Actions.

1.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, ESI, testimony, transcripts, and tangible things), that are produced in, or created for the purpose of, disclosures or responses to discovery in the Actions.

1.3 “Confidential” Disclosure or Discovery Material: All Disclosure or Discovery Material that qualifies for protection under Federal Rule of Civil Procedure 26(c), including documents and information that are derived from trade secrets or other confidential research, development, commercial or other non-public information of commercial value.

1.4 “Highly Confidential” Disclosure or Discovery Material: “Confidential” Disclosure of Discovery Material that a Party believes to be of a highly sensitive commercial nature, such as documents or information reflecting, containing or derived from current confidential trade secrets, research, development, pricing, production, cost, marketing or customer information, disclosure of which could create an elevated risk of commercial or competitive harm.

1.5 Receiving Party: a Party or non-party that receives Disclosure or Discovery Material from a Producing Party in the Actions.

1.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in the Actions.

1.7 Designating Party: a Party or non-party that designates Disclosure or Discovery Material as “Confidential” or “Highly Confidential.”

1.8 Protected Material: any Confidential Disclosure or Discovery Material or Highly Confidential Disclosure or Discovery Material.

1.9 Outside Counsel: attorneys, paralegals, and their litigation support personnel (including personnel from outside litigation support services retained to provide technical or logistical support, including, e.g., photocopying, videotaping, transcribing oral testimony, translating, preparing exhibits or demonstrations, collecting, organizing, storing, retrieving data in any form or medium) who are not employees of a Party, but who are retained to represent a

Party in the Actions, whose firms have executed this Order, and who have been advised by counsel of their obligations hereunder.

1.10 In-House Counsel: attorneys, paralegals, and other legal department personnel who are employees of a Party who are involved in the prosecution or defense of the Actions.

1.11 Counsel (without qualifier): Outside Counsel and In-House Counsel (as well as their support staffs).

1.12 Expert: a person who has been retained by a Party or its Counsel to serve as an expert witness or consultant, including without limitation a professional jury or trial consultant, to furnish their technical or expert services in connection with the Actions, and any individuals assisting such experts or consultants.

2. **DESIGNATING MATERIAL**. The Producing Party may designate Disclosure or Discovery Material “Confidential” or “Highly Confidential,” as specified below. The Producing Party shall apply a confidentiality designation only when that party has a reasonable, good faith belief that the information so designated constitutes “Confidential” or “Highly Confidential” material. The protections conferred by this Order cover not only the protected information itself, but also any information copied or extracted from it, as well as copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or Counsel to or in court or in other settings that might disclose Protected Material.

2.1 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material must be designated for protection under this Order by clearly designating the material before it is disclosed or produced.

2.2 Designation Mechanics. The designation of materials as “Confidential” or “Highly Confidential” shall be made as follows:

a. For produced documents (apart from transcripts of depositions or other pretrial or trial proceedings), affidavits, or declarations, before production or disclosure, the Producing Party shall affix the appropriate designation (*i.e.*, “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”) on documents containing Protected Material. The Producing Party must use reasonable means to determine the extent to which requested materials contain information that qualifies for protection under this Order.

b. For written discovery responses, the Producing Party shall affix the appropriate designation (*i.e.*, “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”) next to or above any response to a discovery request or on each page of a response that contains Confidential or Highly Confidential Discovery or Disclosure Material.

c. All testimony given in deposition shall initially be deemed “Highly Confidential.” Any deposition exhibit produced in discovery prior to the deposition shall not be deemed “Highly Confidential” unless it was designated as such pursuant to the designation mechanics set forth in this Order. Any Party or non-party who wishes to designate testimony as “Confidential” or “Highly Confidential” shall have thirty (30) days after the court reporter issues the final transcript to identify the specific pages and lines of the transcript that contain Confidential or Highly Confidential Discovery or Disclosure Material. Only those portions of the testimony that are appropriately designated for protection within the thirty (30) days shall remain covered by the provisions of this Order. The Parties may consent to additional use or disclosure of all or a portion of any deposition testimony during the thirty (30) day designation period, which consent shall not be withheld unless there is a good faith basis to assert that the testimony is entitled to “Confidential” or “Highly Confidential” treatment.

d. To the extent that information is produced in a form rendering it impractical to label (including information stored in native format or other ESI produced on electronic or magnetic media) (“Computerized Material”), the Producing Party may designate such material consistent with this Protective Order by noting the designation on a cover sheet or transmittal document or by otherwise labeling such documents or media with the appropriate designation (*i.e.*, “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”) and, if applicable, by providing the confidentiality designation as a field within the related load file. Whenever a Receiving Party reduces ESI designated under this Protective Order as either Confidential or Highly Confidential to hard-copy form, the Receiving Party shall mark such hard-copy form with the appropriate designation or include the cover sheet or transmittal document reflecting the designation. Whenever any Confidential or Highly Confidential Computerized Material is copied into another form, the Receiving Party shall also mark those forms with the appropriate designation.

e. To the extent that any Receiving Party or counsel for the Receiving Party creates, develops, or otherwise establishes or maintains for review on any electronic system Disclosure or Discovery Material designated Confidential or Highly Confidential, that party and/or its counsel must take all reasonable steps to ensure that access to such media is properly restricted to those persons who, by the terms of this Order, may have access to Confidential or Highly Confidential Disclosure or Discovery Material, and will affix to any media containing such Disclosure or Discovery Material, such as a DVD, a label designating the information as “Confidential” or “Highly Confidential.”

2.3 Inadvertent Failure to Designate. Any Disclosure or Discovery Material produced by a Party or non-party that should have been designated Protected Material but is inadvertently

produced without a designation may subsequently be designated as Protected Material. Any party that seeks to so designate Disclosure or Discovery Material already produced shall, upon discovery of such inadvertent disclosure, promptly inform the Receiving Party in writing, indicate the appropriate designation and provide, at its own expense, substitute Disclosure or Discovery Material bearing the designation “Confidential” or “Highly Confidential. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

2.4 Inadvertent Production. If a Party or non-party through inadvertence produces or provides any Document(s) or thing(s) that it believes is/are subject to the attorney-client privilege, work-product doctrine, or other protection from discovery, the producing party may give written notice to the Receiving Party that the Document(s) or thing(s) is/are subject to a claim of attorney-client privilege, work product, or other protection and request that the Document(s) or thing(s) be returned to the producing party. If a Party receives any Document(s) or thing(s) that on its face appears to be subject to attorney-client privilege, work-product doctrine, or other protection, the Receiving Party shall immediately notify the Producing Party so that the producing party may exercise its rights hereunder and request the return of the Document(s) or thing(s). In either event, the Receiving Party shall either (a) return to the producing party or destroy such Document(s) or thing(s), together with all copies thereof, and shall not retain any copy of same (or the information contained therein), in any form; or (b) if the Receiving Party has a good faith basis to challenge the validity of the claim of privilege, inform the Producing Party in writing that the Receiving Party intends to challenge the privilege claim. If the privilege claim is being challenged, counsel may maintain copies of the recalled documents and any related work product only for the purposes of determining whether to file a

motion to challenge the claim of privilege and for challenging the claim of privilege by motion and may retain those copies pending the resolution of any dispute as to the recalled documents. If the Receiving Party intends to challenge the privilege designation, the Receiving Party may request a meet and confer to discuss the appropriateness of the privilege claim. If the Receiving Party concludes that it disputes the validity of the claim of privilege after the parties' meet and confer, the Receiving Party shall promptly notify the Producing Party in writing and file a motion to challenge the claim of privilege. The Receiving Party may attach the recalled document(s) for in camera review with its motion. Return of the Document(s) or thing(s) to the producing party shall not constitute an admission or concession, or permit any inference, that the returned Document(s) or thing(s) is/are, in fact, properly subject to the attorney-client privilege, work-product doctrine, or other protection, nor shall it foreclose any party from seeking an order from the Court that the assertion of attorney-client privilege, work-product doctrine, or other protection is not proper for any reason other than a waiver caused by the inadvertent production. In the event that a Receiving Party opts to destroy the inadvertently produced material, it shall promptly notify the Designating Party when the material is appropriately destroyed.

### **3. ACCESS TO AND USE OF PROTECTED MATERIAL**

3.1 Disclosure of Confidential Information. Unless otherwise ordered by the Court or permitted in writing by each Designating Party, a Receiving Party may disclose any Disclosure or Discovery Material designated as "Confidential" only:

- a. to the Receiving Party's Outside Counsel;
- b. to the Receiving Party's In House Counsel;
- c. to individual parties and officers, directors, and employees of a party, but only to the extent counsel needs to disclose Confidential Information in order to provide



effective representation to their clients and such person has signed the “Agreement to Be Bound by Protective Order” (Exhibit “A”);

d. to any Expert who has signed the “Agreement to Be Bound by Protective Order” (Exhibit “A”);

e. to the Court and its personnel in the Actions, and any relevant appellate court in the event that any appeal is taken in the Actions;

f. to court reporters, and their staffs;

g. to any person identified in a document designated as Confidential as an author of the document in part or in whole, addressee, or is indicated on the face of the document or its metadata as having received a copy;

h. to any person who has been identified by the Producing Party as having previously been provided with, or having had access to, the document or the information therein;

i. to any person for whom a foundation has been laid establishing knowledge of the information therein;

j. to any person who is identified or referenced in the document or whose conduct is purported to be identified or referenced in the document , provided that counsel for the party intending to disclose such information has a good-faith basis for believing that the person has prior knowledge of such information;

k. to any person who is a current or former employee, officer or director of the Producing Party; and

l. to any other person that the Designating Party has agreed to in advance. If a Designating Party does not agree to a request to disclose material designated as “Confidential” to a person not listed in this paragraph, the party making such request may seek a modification of

this Order upon a showing of good cause to permit such disclosure. Until such application is decided, the material shall continue to be treated as designated.

3.2 Disclosure of “Highly Confidential” Information. Unless otherwise ordered by the Court or permitted in writing by each Designating Party, a Receiving Party may disclose any Disclosure or Discovery Material designated “Highly Confidential” only:

- a. to the Receiving Party's Outside Counsel;
- b. to any Expert who has signed the “Agreement to Be Bound by Protective Order” (Exhibit “A”);
- c. to the Court and its personnel in the Actions and any relevant appellate court in the event that any appeal is taken in the Actions;
- d. to court reporters, and their staffs;
- e. to current employees, officers, and directors of the Producing Party;
- f. to former employees of the Producing Party at deposition if counsel for the Party intending to disclose the “Highly Confidential” information believes in good faith that the deponent has prior knowledge of the specific “Highly Confidential” information to be disclosed based upon (i) the contents of the “Highly Confidential” information; (ii) testimony of the witness or other witnesses; (iii) other discovery produced in the Actions; (iv) counsel's investigation in this case; or (v) publicly available information;
- g. to any person identified in a document designated as Highly Confidential as an author of the document in part or in whole, addressee, or is indicated on the face of the document or its metadata as having received a copy;
- h. to any person who has been identified by the Producing Party as having previously been provided with, or having had access to, the document or the information therein;

i. to any person and their counsel, provided that (i) counsel for the party intending to disclose such information has a good-faith basis for believing that the deponent or witness has prior knowledge of such information; (ii) the disclosure to such person is limited to that portion of the document containing such information; and (iii) such individuals are first advised that a Protective Order has been entered in the Actions restricting the disclosure of protected material for any purpose other than their use in the Actions; and

j. to any other person that the Designating Party has agreed to in advance. If a Designating Party does not agree to a request to disclose material designated as “Highly Confidential” to a person not listed in this paragraph, the party making such request may seek a modification of this Order upon a showing of good cause to permit such disclosure. Until such application is decided, the material shall continue to be treated as designated.

3.3 Disclosure of Highly Confidential Materials to In House Counsel. A Receiving Party’s Outside Counsel may request the consent of the Producing Party to disclose information designated Highly Confidential to In House Counsel who has signed the “Agreement to Be Bound by Protective Order.” The granting of such consent by a Producing Party shall not be deemed a waiver of any argument that such materials have been appropriately designated as Highly Confidential under the procedures outlined in Paragraph 5 of this order.

3.4 Filing Protected Material. In the event a Party wishes to use any Protected Material or documents or information that contain or make reference to Protected Material in any pleading or document filed with the Court in the Actions, such pleading or document shall be filed under seal in a manner consistent with the Local Rules of this Court.

3.5 Challenges by Members of the Public to Sealing Orders. A party or interested member of the public has a right to challenge the sealing of particular documents that have been

filed under seal, and the party asserting confidentiality will have the burden of demonstrating the propriety of filing under seal.

3.6 Absent Class Members. Confidential or Highly Confidential Information may not be disclosed to absent members of a certified class (each an “Absent Class Member”) who have not intervened or otherwise appeared in one of these Actions, except under the circumstances described in Paragraph 3.1 and 3.2 of this Order. If, however, Confidential or Highly Confidential Information is contained in a filing with the Court, such filing may be disclosed to counsel for the Absent Class Member (or the Absent Class Member if not represented) solely for purposes of evaluating any settlement affecting the Absent Class Members, provided that such counsel, if any, and the Absent Class Member have signed the “Agreement to Be Bound by Protective Order” (Exhibit “A”).

4. **RESPONSIBILITY FOR COMPLIANCE.** The Receiving Party's Counsel who discloses “Confidential” or “Highly Confidential” information shall be responsible for assuring compliance with the terms of this Order with respect to persons to whom such “Confidential” or “Highly Confidential” information is disclosed, and shall obtain and retain the original Agreements to Be Bound by Protective Order (Exhibit “A”) executed by qualified recipients of “Confidential” or “Highly Confidential” information (if such execution was required by the terms of this Order). Persons who come into contact with “Confidential” or “Highly Confidential” material only for clerical, administrative, stenographic, or court reporting purposes are not required to execute the Agreement to Be Bound by Protective Order (Exhibit “A”). If it comes to a Designating Party's attention that any materials that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that

Designating Party must promptly notify all other Parties that it is withdrawing or amending the designation.

5. **CHALLENGES TO DESIGNATION.** Entry of this Order shall be without prejudice to any Party's motion for relief from or modification of the provisions hereof or to any other motion relating to the production, exchange, or use of any Disclosure or Discovery Material. If a Party disagrees with a Designating Party's designation of Disclosure or Discovery Material as "Confidential" or "Highly Confidential," the Party contesting the designation shall provide to the Designating Party, through its counsel, written notice of its disagreement. Such an objection can be made at any time. The Designating Party or its counsel shall respond to the objection in writing within five (5) business days of its receipt of such written objection by either (i) agreeing to remove the designation; or (ii) stating reasons supporting the designation. If the Designating Party fails to so respond within five (5) business days, the objecting party may subsequently treat the contested Disclosure or Discovery Material as non-protected. If the objecting party and the Designating Party are unable to agree upon the terms and conditions of disclosure for the Disclosure or Discovery Material at issue, the objecting party may seek resolution of the issue with the Court. Any such motion shall not exceed five (5) double-spaced pages. The burden of persuasion in any such proceeding shall be on the Designating Party. Pending the resolution of the disputed designation, the Disclosure or Discovery Material at issue shall continue to be treated in accordance with the Designating Party's designation of "Confidential" or "Highly Confidential" unless and until differing treatment is directed pursuant to order of the Court or by subsequent resolution of the dispute by the Designating and objecting Party.

In the event that the Court orders that the challenged material is not properly designated, the Designating Party shall reproduce copies of all materials with their designations removed or amended in accordance with the ruling within thirty (30) business days or within the time set by the Court at the expense of the Designating Party.

6. **OWN USE.** Nothing in this Order shall be interpreted to prohibit or prevent the Producing Party from using or discussing its own Confidential or Highly Confidential Disclosure or Discovery Material in any way it sees fit to so use or discuss that material for any reason. Any non-public use or non-public discussion of Confidential or Highly Confidential Material shall not be deemed a waiver of the terms of this Order.

7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED.** If a Receiving Party is served with a subpoena or an order is issued in separate litigation, or other form of compulsory process that would compel disclosure of any Protected Material, the Receiving Party must so notify the Designating Party, in writing immediately, no more than five (5) business days after receiving the subpoena, order or other form of compulsory process, and shall, to the extent permitted by law, withhold production until any dispute relating to the production of such material is resolved.

8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.** If a Receiving Party learns that it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must, immediately and in any case no more than seven (7) business days after learning of such disclosure, (a) notify in writing the Producing Party and, if different, the Designating Party of the unauthorized disclosures and all pertinent facts relating to such disclosures, (b) make every reasonable effort to prevent disclosure by each unauthorized person who received such information, (c) use commercially

reasonable efforts to retrieve all copies of the Protected Material, (d) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (e) request such person or persons to execute the “Agreement to Be Bound by Protective Order” (Exhibit “A”).

9. **USE AND DISCLOSURE OF INDEPENDENTLY OBTAINED INFORMATION.** Nothing herein shall impose any restriction on the use or disclosure by a Party or its agent of its own information, or of publicly available information, or of information lawfully available to that Party, or of information that lawfully came into the possession of the Party independent of any disclosure of Disclosure or Discovery Material in the Actions and without any corresponding confidentiality obligation.

10. **PRE-TRIAL APPLICATION ONLY.** This Order shall apply to pre-trial proceedings in the Actions and shall have no application at trial. The Parties agree to confer in good faith on a protective order to govern during trial in the Actions. This Order, however, shall remain in effect until such time as an order to govern trial proceedings is entered. Should the Producing or Designating Party believe any document warrants protection beyond that described above, the Parties and impacted non-parties shall confer with respect to the treatment of that specific document.

11. **THIRD-PARTIES.** The terms of this Order are applicable to information produced by third parties in the Actions and designated as “Confidential” or “Highly Confidential.” The Parties, in conducting discovery from third parties, shall attach to such discovery requests, subpoenas, or other discovery a copy of this Protective Order so as to apprise such third parties of their rights herein.

12. **DURATION OF ORDER/RETURN OF CONFIDENTIAL INFORMATION.** All provisions of this Order restricting the use of “Confidential” or “Highly Confidential” Disclosure or Discovery Material shall continue to be binding after the conclusion of the Actions, unless otherwise agreed or ordered by the Court. Within sixty (60) days of the conclusion of the Actions (whether by entry of a final order of dismissal, judgment, settlement, or disposition on appeal, or otherwise), the Receiving Party shall either return or destroy the Confidential or Highly Confidential Material. Whether the Disclosure or Discovery Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty (60) day deadline confirming that the Disclosure or Discovery Material was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Disclosure or Discovery Material (except as provided herein); provided, however, that counsel may retain their attorney work product, all filed documents or pleadings and copies of any deposition transcripts and exhibits, but such retained material shall remain subject to the terms of this Order.

13. **FUTURE PARTIES.** The terms of this Order shall be binding upon all current and future parties to the Actions and their counsel. Within ten (10) business days of (i) the entry of appearance by a new party to the Actions; or (ii) notification of the filing in this District of a complaint that arises out of the same or substantially similar facts alleged in the operative complaint(s) in the Actions, Plaintiffs' Co-Lead Counsel for both the direct purchaser plaintiffs and the indirect purchaser plaintiffs shall promptly serve a copy of this Protective Order on counsel for any new direct or indirect purchaser plaintiff, respectively, and Counsel for



Defendants shall promptly serve a copy of this Protective Order on counsel for any new defendant.

14. **JURISDICTION.** The Court retains jurisdiction to enforce the terms and conditions of this Order during and after the conclusion of the Actions.

15. **NO ADMISSION.** A party's compliance with the terms of this Order shall not operate as an admission that any particular document is or is not (a) confidential, (b) privileged or (c) admissible in evidence at trial.

16. **OTHER PROCEEDINGS.** Disclosure and Discovery Material shall be utilized by the Receiving Party and its counsel only for purposes of the Actions and for no other purposes.

IT IS SO STIPULATED.

Date: February 26, 2019

Respectfully submitted,

/s/ Wyatt B. Durette, Jr.

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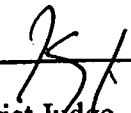
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*Counsel for Defendant Masonite Corporation*

IT IS SO ORDERED.

BY THE COURT:

Date: 28 February, 2019  
United States District Judge

Is/   
John A. Gibney, Jr.  
United States District Judge  
HON. JOHN A. GIBNEY, JR.

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on February 26, 2019, I served a copy of the foregoing via the Court's ECF system

Kevin J. Funk

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

<b>IN RE: INTERIOR MOLDED DOORS ANTITRUST LITIGATION</b>	<b>Lead Civil Action No. 3:18-cv-00718-JAG</b>
<b>IN RE: INTERIOR MOLDED DOORS INDIRECT PURCHASER ANTITRUST LITIGATION</b>	<b>Lead Civil Action No. 3:18-cv-00850-JAG</b>

**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_, acknowledge and agree that I have received and read a copy of the attached Protective Order. I understand the terms of this Order and agree to comply with and be bound by this Order. I also agree to be subject to the Court's jurisdiction for enforcement of the Order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Company

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature