PUBLIC - REDACTED

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	
Tronox Limited et al.	**Docket No. 9377**

NON-PARTY THE SHERWIN-WILLIAMS COMPANY'S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party The Sherwin-Williams Company ("SW") respectfully moves this Court for *in camera* treatment of certain competitively-sensitive, confidential business documents (the "Confidential Documents"). SW produced these documents, among others, in response to third-party subpoenas and a civil investigative demand in this matter. Complaint Counsel and the Respondents have now notified SW that they intend to introduce 20 of SW's documents,[1] including the Confidential Documents, into evidence at the administrative trial in this matter. *See* Letter from Complaint Counsel dated April 19, 2018 (attached as Exhibit A); Letters from Respondents dated April 19, 2018 (attached as Exhibit B).

The Confidential Documents warrant protection from public disclosure given the sensitive business information and trade secrets they contain. SW submits this Motion respectfully requesting permanent *in camera* treatment of 14 Confidential Documents in their entirety and designated portions of six documents. SW requests that *in camera* treatment mirror

[1] As explained below, some of these "documents" contain multiple sets of documents and/or numerous pages without designations. Some of the documents are also duplicates. Of the 20 total documents, 17 are unique.

the protections afforded by the Protective Order entered in this case (i.e. disclosure is not permitted to inside counsel of Respondents).

All of the materials for which SW is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, SW would be significantly harmed (1) in its dealings with suppliers and ability to procure titanium dioxide under competitive terms, and (2) in its ability to offer competitively priced and innovative products to compete against numerous coatings suppliers. In support of this motion, SW relies on the Declaration of George Young, Senior Vice President for Global Procurement and Supply Chain, attached as Exhibit C (the "Young Declaration"), which provides additional details about the documents for which SW is seeking *in camera* treatment.

I. The Documents for Which Protection is Sought

As specified below, SW seeks *in camera* treatment for all or portions of the following Confidential Documents, copies of which are attached as Non-Public Exhibit D (for the 14 documents where SW requests full *in camera* treatment) and Non-Public Exhibit E (for the six documents where SW requests *in camera* treatment of certain designated portions[2]).

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.	Notes
SW Requests Full *In Camera* Treatment					
PX4018	Email from [redacted] re:	2/20/2017	SHW000240	SHW000227	G. Young Deposition Exhibit PX4018 (Exhibit 7)
PX4020	Report: Tronox Acquisition of Cristal Global - FTC SHW Review and Response	3/7/2017	SHW000235	SHW000239	G. Young Deposition Exhibit PX4020 (Exhibit 8)

[2] In Non-Public Exhibit E, SW provides three copies of each document where partial *in camera* treatment is requested – a clean copy, a copy with highlighted text indicating the proposed redactions, and a copy with the proposed redactions applied.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.	Notes
PX4022	Email from Hugh Kinast to Meredith Levert re: SHW FTC Response Comments 7-19-17	7/20/2017	PX4022-001	PX4022-013	G. Young Deposition Exhibit 3
PX4027	Sherwin-Williams Presentation: North America Procurement TiO2 Supplier Meetings	7/31/2017	SHW003949	SHW003979	
Not provided	[redacted]	12/8/2016	SHW003168	SHW003185	
Not provided	[redacted] Overview	2017	SHW003186	SHW003215	
Not provided	[redacted] Strategy Alignment	Nov. 2015	SHW003881	SHW003909	G. Young Deposition Exhibit 6
Not provided	Email from Hugh S. Kinast to Meredith Levert re SHW FTC Response Comments 7-19-17 (and accompanying attachments)	7/20/2017	Not provided	Not provided	Duplicate of PX4022; G. Young Deposition Exhibit 3
Not provided	Transcript of the Deposition of Adam J. Gildner	2/3/2015	Not provided	Not provided	124 pages (no designations provided by Respondents)
Not provided	Cristal USA Inc.'s Unredacted Answer and Counterclaim, Dkt. No. 159-1	4/10/2015	Not provided	Not provided	65 pages (no designations provided by Respondents)
Not provided	Expert Report of Robert Willig (Corrected)	6/12/2015	Not provided	Not provided	364 pages (no designations provided by Respondents)
Not provided	Transcript of the Deposition of David Murrer	8/19/2015	Not provided	Not provided	56 pages (no designations provided by Respondents)
Not provided	Cristal USA Inc.' s Memorandum of Law in Support of Motion for Summary Judgment, Dkt. No. 214-1	4/25/2016	Not provided	Not provided	54 pages (no designations provided by Respondents)
Not provided	Exhibits I-IV, B-6, B-16, C-406, C-432, C-434, C-435, C-438, C439, and D-2 of Cristal USA Inc.' s Memorandum of Law in Support of Motion for Summary Judgment, Dkt. No. 216	4/25/2016	Not provided	Not provided	188 pages (no designations provided by Respondents)
SW Requests *In Camera* Treatment of Certain Designated Portions					
PX7020	Deposition Transcript: George Young	3/13/2018	PX7020-001	PX7020-068	No designations provided by FTC

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.	Notes
Not provided	Deposition Transcript of George Young (and accompanying exhibits[3])	3/13/2018	Not provided	Not provided	Duplicate of PX7020; no designations provided by Respondents
Not provided	Exhibit 5 to George Young deposition transcript (draft G. Young declaration)	10/18/2017	FTC-PROD-0028885	FTC-PROD-0028863	*See* Footnote 3
PX8003	Declaration of George Young (Sherwin-Williams)	10/26/2017	PX8003-001	PX8003-008	G. Young Deposition Exhibit 1; G. Young Deposition Exhibit PX8003 (Exhibit 9)
Not provided	Email from Hugh S. Kinast to Meredith Levert re FTC's Tronox/Cristal Investigation (and accompanying attachments - Declaration of George Young)	10/26/2017	FTC-PROD-0029028	FTC-PROD-0029037	Duplicate of PX8003; G. Young Deposition Exhibit 1
Not provided	SW Response to EC RFI	1/25/2018	SHW000166	SHW000210	G. Young Deposition Exhibit 2

II. SW Confidential Documents are Secret and Material such that Disclosure Would Result in Serious Injury to SW

In camera treatment of material is appropriate when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *5 (1999). In considering requests for *in camera* treatment, "courts have generally attempted to protect confidential business information from unnecessary airing." *HP. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

[3] There are nine exhibits to the George Young deposition transcript. Exhibits 1-3, Exhibit 6 and Exhibits 7-9 (identified in the index to the deposition as Exhibits PX4018, PX4020, and PX8003) are already identified as separate exhibits by the litigants and addressed in the chart above. Exhibit 4 is a S&P Capital IQ copy of an SW earnings call transcript for Q2 2015 on July 16, 2015. This earnings call transcript is public information and SW does not seek *in camera* treatment. Exhibit 5 is addressed separately above.

In evaluating both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).

The Confidential Documents are both secret and material to SW's business, as described in detail in the Young Declaration at ¶ 10-13. In sum, the documents contain information and trade secrets relating to SW's use of TiO2, SW's procurement expertise (e.g., past and future TiO2 purchasing strategy and negotiation tactics used with suppliers), SW's TiO2 purchasing data, and the identity of SW's TiO2 suppliers, including specific confidential contract terms with those suppliers (collectively, "TiO2 Confidential Information"). Young Declaration at ¶ 7. As one of the world's major producers of architectural and industrial coatings, SW considers this TiO2 Confidential Information to be competitively significant. Young Declaration at ¶ 3. TiO2 is an important raw material input that provides critical performance characteristics to many of SW's coatings products. Young Declaration at ¶ 4. SW maintains a small, highly-skilled TiO2 procurement team. Young Declaration at ¶ 5. TiO2 Confidential Information related to procurement is tightly-controlled within the small TiO2 procurement team, and not disseminated widely within SW. *Id;* Young Declaration at ¶ 7. Furthermore, SW invests substantially in research and development efforts to optimize the use of TiO2 in its coatings, the details of which are considered highly proprietary trade secrets. Young Declaration at ¶ 6. In addition, the risk of harm to SW from the public disclosure of its TiO2 Confidential Information is significant.

Young Declaration at ¶ 8. For this reason, when SW produced the Confidential Documents, they were designated as "Confidential" pursuant to the Protective Order in this case. Because of the highly confidential and proprietary nature of the information and its materiality to SW's business, *in camera* treatment is appropriate.

Further, disclosure of the Confidential Documents will result in the loss of business advantage to SW. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at *7 (Dec. 23, 1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.'"). This loss of business advantage would occur vis-à-vis both SW's suppliers and SW's competitors, as described in detail in the Young Declaration at ¶ 8.

Finally, SW's status as a third party is relevant to the treatment of its documents. The FTC has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *HP. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a third-party, which deserves "special solicitude" in its request for in camera treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). SW's third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

III. The Confidential Documents Contain Highly Sensitive Procurement Information and Trade Secrets, which will Remain Sensitive Over Time and Thus, Permanent *In Camera* Treatment is Warranted

The Confidential Documents that the litigants are proposing to introduce in this matter fall into three categories: (1) **SW's supplier identities, contract terms, and purchasing data for TiO2**; (2) **internal SW strategic analyses** of its purchase and use of TiO2; and (3)

documents from the 2015 lawsuit *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.* which contain information in categories (1) and (2) specific to Valspar and also are subject to indefinite protective orders in the U.S. District Court for the District of Delaware, the U.S. District Court for the District of Minnesota, and the U.S. District Court for the Southern District of Texas. Young Declaration at ¶ 9. For the reasons described below, all three categories are "likely to remain sensitive or become more sensitive with the passage of time" such that the need for confidentiality is not likely to diminish over time. *In re Dura Lube Corp.*, 1999 FTC LEXIS at *7-8.

SW's supplier identities, contract terms, and purchasing data for TiO2 will remain competitively sensitive over time because, [redacted]. Young Declaration at ¶ 14. As a result, the risk that suppliers or competitors could extrapolate SW's purchasing requirements (which are detailed with specificity, i.e. by region and product type) and utilize SW's contract terms or negotiating strategy to their competitive advantage will not diminish over time. *Id.* Due to the sensitive nature of these procurement secrets, SW respectfully requests this court to apply indefinite *in camera* treatment or, at a minimum, 10 years of *in camera* treatment for these documents. *See In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at *2-3 (April 25, 1990) (extending the duration of the *in camera* treatment for a period of 10 years due to "the highly unusual level of detailed cost data contained in these specific trial exhibit pages, [and] the existence of extrapolation techniques of known precision in an environment of relative economic stability [...]").

Internal SW strategic analyses of its purchase and use of TiO2 contain procurement secrets as in the first category described above, as well as technical information regarding the

integration of certain qualified TiO2 grades into product formulations that SW considers to be "trade secrets". Young Declaration at ¶ 6, 11. "Trade secrets" - such as secret formulas and secret technical information - are granted more protection than ordinary business documents. *In re Dura Lube Corp.*, 1999 FTC LEXIS *Id.* at *5. There can be no doubt that SW internal strategic analyses, which identify SW-specific TiO2 grades and reveal secret testing information on the incorporation of TiO2 grades into product formulations, include trade secrets and are entitled to additional protection. The competitive significance of SW's TiO2 trade secrets is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate. *Id.* at §6.

Documents from the 2015 lawsuit *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.* were originally prepared or produced as "Confidential" or "Attorneys' Eyes Only" pursuant to (and remain subject to) protective orders in the U.S. District Court for the District of Delaware, the U.S. District Court for the District of Minnesota, and the U.S. District Court for the Southern District of Texas.[4] The obligations imposed by three different federal district court judges survive the termination of the actions and Valspar (now SW) remains obligated to abide by their terms.[5] It is therefore necessary and appropriate to prevent the public disclosure of these documents in order to avoid violation of multiple protective orders entered by three different

[4] Copies of these protective orders are attached as Exhibit F. Although Respondents identified as potential trial exhibits certain documents produced in the Minnesota action, joint discovery was conducted across all three "Related Actions" (*The Valspar Corporation et al. v.Kronos Worldwide, Inc, et al.*, Case No. 13-3214-RHK-LIB, venued in the US District Court for the District of Minnesota; *The Valspar Sourcing Corporation, and Valspar Sourcing, Inc., v. Huntsman International, LLC*, Case No. 4:14-cv-01130, venued in the US District Court for the District of Texas; and *The Valspar Corporation et al. v. E.I. DuPont de Nemours*, Case No. 1:14-cv-00527, venued in the US District Court for the District of Delaware).

[5] *See* Exhibit F protective orders at ¶ 17 (¶ 16 of the Delaware Protective Order) ("[A]ny such archival copies that contain or constitute Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" remain subject to this Order"), and ¶ 27 ("The Obligations imposed by the Protective Order shall survive the termination of this action").

courts that restrict disclosure of the same material for which SW respectfully seeks *in camera* treatment from this court.

In addition to their protected status under the existing protective orders in Delaware, Minnesota, and Texas, the identified documents from the *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.* litigation contain TiO2 Confidential Information, including procurement secrets such as negotiation tactics, supplier identities, and contract terms. Young at ¶ 12. Consequently, even if this Court finds that these documents are not protected in their entirety from public disclosure by the existing protective orders in place, the documents still should be afforded *in camera* treatment under this Court's rules. However, as discussed below, Respondents have not identified any portions of these 851 pages as trial exhibits with enough specificity for SW to more narrowly tailor its request for *in camera* treatment. Unless and until Respondents identify specific portions of these documents for use as trial exhibits, SW requests indefinite *in camera* treatment of the entirety of these documents.

IV. SW's Requests for *In Camera* Treatment are Narrowly Tailored

Requests for *in camera* treatment must be limited to those portions of lengthy documents that contain secret and material information that meets the *in camera* standard. *In re Aspen Tech., Inc.*, 2004 FTC LEXIS 56, at *5-6 (May 5, 2004) ("Respondent's request for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard."). *See also In re Union Oil Co. of Calif,* 2005 FTC LEXIS 9, at * 1 (Jan. 19, 2005) (granting *in camera* treatment where parties sought it only "for narrowly tailored portions of deposition testimony"). As noted in Young Declaration at ¶ 13, the litigants in this matter propose to introduce the transcript of George Young's deposition and draft and final versions of his declaration, in which he candidly discusses TiO2

Confidential Information, including both procurement and trade secrets. Young at ¶ 13. SW has appropriately devoted significant time and expense to narrowly tailor its request for *in camera* treatment to only those portions of deposition testimony and declaration statements that contain TiO2 Confidential Information.

However, it is unreasonable for Respondents to shift the burden to third-party SW to parse the 851 pages of motions, deposition transcripts, and expert report/exhibits that Respondents have identified as potential exhibits from the *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.* litigation for TiO2 Confidential Information. Rather, SW has requested that Respondents identify specific portions of the *Valspar Corp. et al* litigation documents that may be used in this litigation, and Respondents advised they could not do so at this time. SW has cooperated with Respondents (and Complaint Counsel) in this matter, producing over 3,000 pages of documents and providing deposition testimony, thus incurring substantial expense. As a third-party in this action, SW should not be required to incur yet additional significant expense to parse these documents, many of which may never even be used by Respondents in this litigation. To the contrary, Respondents should bear the burden of narrowing their proposed exhibits. Unless and until Respondents identify specific portions of these documents for use as trial exhibits, SW requests indefinite *in camera* treatment for the entirety of the *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.* litigation documents.

V. *In Camera* Treatment is Also Warranted for Witness Testimony Involving the Confidential Documents

During the Part 3 administrative proceeding, witnesses may be questioned about the Confidential Documents. Testimony about these matters could result in the disclosure of the same information contained in the Confidential Documents described above. Thus, SW also requests that the portions of trial testimony that would reveal Confidential Information or the

contents of the Confidential Documents for which SW seeks in camera treatment be conducted in a closed session, with any resulting transcripts also receiving *in camera* treatment. *See In the Matter of Polypore Int'l, Inc.*, 2009 WL 1499350, at *5 (granting *in camera* treatment for documents and noting that parties may request the hearing "go into an *in camera* session" when "any of the information contained" in the confidential documents "is referred to in court".)

VI. Conclusion

For the reasons set forth above and in the accompanying Young Declaration, SW respectfully requests that this Court grant *in camera* treatment for the Confidential Documents as follows:

- Indefinite *in camera* treatment or, at a minimum, 10 years of *in camera* treatment: PX4022, SHW003186–SHW003215, PX7020, FTC-PROD-0028885-FTC-PROD-028863, PX8003, FTC-PROD-0029028-FTC-PROD-0029036, SHW000166–SHW00021
- Indefinite *in camera* treatment: PX4018, PX4020, PX4027, SHW003168–SHW003185, SHW003881–SHW003909, and all documents from the 2015 lawsuit *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.*

Respectfully submitted,

WEIL GOTSHAL & MANGES LLP

By: */s/ Steven A Newborn*
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Attorneys for The Sherwin-Williams Company
Date: May 1, 2018

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-Party The Sherwin-Williams Company ("SW") notified counsel for the parties via telephone on or about April 27, 2018 that SW would be seeking *in camera* treatment of the Confidential Documents. Both Complaint Counsel and counsel for Respondent Cristal indicated that they would not object to SW's motion.

Dated: May 1, 2018

Megan A Granger

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Counsel for The Sherwin-Williams Company

PUBLIC - REDACTED

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
	)	
	)	**Docket No. 9377**
Tronox Limited et al.	)	
	)	
	)	

[PROPOSED] ORDER

Upon consideration of Non-Party The Sherwin-Williams Company's (SW's) Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order in their entirety.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
PX4018	Email from [redacted] re: [redacted]	2/20/2017	SHW000240	SHW000227
PX4020	Report: Tronox Acquisition of Cristal Global - FTC SHW Review and Response	3/7/2017	SHW000235	SHW000239
PX4022	Email from Hugh Kinast to Meredith Levert re: SHW FTC Response Comments 7-19-17	7/20/2017	PX4022-001	PX4022-013
PX4027	Sherwin-Williams Presentation: North America Procurement TiO2 Supplier Meetings	7/31/2017	SHW003949	SHW003979
Not provided	[redacted]	12/8/2016	SHW003168	SHW003185
Not provided	[redacted] Overview	2017	SHW003186	SHW003215
Not provided	[redacted] Strategy Alignment	Nov. 2015	SHW003881	SHW003909
Not provided	Email from Hugh S. Kinast to Meredith Levert re SHW FTC Response Comments 7-19-17 (and accompanying attachments)	7/20/2017	Not provided	Not provided

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
Not provided	Transcript of the Deposition of Adam J. Gildner	2/3/2015	Not provided	Not provided
Not provided	Cristal USA Inc.'s Unredacted Answer and Counterclaim, Dkt. No. 159-1	4/10/2015	Not provided	Not provided
Not provided	Expert Report of Robert Willig (Corrected)	6/12/2015	Not provided	Not provided
Not provided	Transcript of the Deposition of David Murrer	8/19/2015	Not provided	Not provided
Not provided	Cristal USA Inc.' s Memorandum of Law in Support of Motion for Summary Judgment, Dkt. No. 214-1	4/25/2016	Not provided	Not provided
Not provided	Exhibits I-IV, B-6, B-16, C-406, C-432, C-434, C-435, C-438, C439, and D-2 of Cristal USA Inc.' s Memorandum of Law in Support of Motion for Summary Judgment, Dkt. No. 216	4/25/2016	Not provided	Not provided

Furthermore, the redacted portions of the following documents are to be provided permanent *in camera* treatment from the date of this Order.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
PX7020	Deposition Transcript: George Young	3/13/2018	PX7020-001	PX7020-068
Not provided	Deposition Transcript of George Young	3/13/2018	Not provided	Not provided
Not provided	Exhibit 5 to George Young deposition transcript (draft G. Young declaration)	10/18/2017	FTC-PROD-0028885	FTC-PROD-0028863
PX8003	Declaration of George Young (Sherwin-Williams)	10/26/2017	PX8003-001	PX8003-008
Not provided	Email from Hugh S. Kinast to Meredith Levert re FTC's Tronox/Cristal Investigation (and accompanying attachments - Declaration of George Young)	10/26/2017	FTC-PROD-0029028	FTC-PROD-0029037
Not provided	SW Response to EC RFI	1/25/2018	SHW000166	SHW000210

ORDERED:

_____
The Honorable D. Michael Chappell
Chief Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I, Megan A. Granger, declare under penalty of perjury under the laws of the District of Columbia that the following is true and correct. On May 1, 2018, I caused to be served the following documents on the parties listed below by the manner indicated:

- **NON-PARTY THE SHERWIN-WILLIAMS COMPANY'S MOTION FOR *IN CAMERA* TREATMENT**
- **[PROPOSED] ORDER**

I hereby certify that I delivered via hand delivery a copy of the foregoing documents to:

The Office of the Secretary
Donald S. Clark
Office of the Secretary
Federal Trade Commission
400 7th Street, SW
Washington, DC 20024

Office of the Administrative Law
D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-106
Washington, DC 20580

I hereby certify that I delivered via electronic mail a copy of the foregoing documents to:

Michael F. Williams
Karen McCartan DeSantis
Matthew J. Reilly
Travis Langenkamp

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Counsel for Respondents National Tronox Limited Industrialization Company (TASNEE), The National Titanium Dioxide Company Limited (Cristal), and Cristal USA, Inc.

May 1, 2018

By: Megan A Granger

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Exhibit A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

April 19, 2018

VIA EMAIL TRANSMISSION

The Sherwin-Williams Company
c/o Megan Granger
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2001 M Street NW, Suite 600
Washington, DC 20036
megan.granger@weil.com

RE: *In the Matter of Tronox Limited et al.*, Docket No. 9377

Dear Megan:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on May 18, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or

affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings.

Please be aware that under the current Second Revised Scheduling Order (revised on February 23, 2018), **the deadline for filing motions seeking *in camera* treatment is May 1, 2018**. A copy of the February 23, 2018 Second Revised Scheduling Order and the December 20, 2017 original Scheduling Order, which contains Additional Provisions, can be found at https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcristal-usa.

If you have any questions, please feel free to contact me at (202) 326-2881.

Sincerely,

/s/ Meredith Levert
Meredith Levert
Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
PX4018	Email from [redacted] Conversion	2/20/2017	SHW000240	SHW000227
PX4020	Report: Tronox Acquisition of Cristal Global - FTC SHW Review and Response	3/7/2017	SHW000235	SHW000239
PX4022	Email from Hugh Kinast to Meredith Levert re: SHW FTC Response Comments 7-19-17	7/20/2017	PX4022-001	PX4022-013
PX4027	Sherwin-Williams Presentation: North America Procurement TiO2 Supplier Meetings	7/31/2017	SHW003949	SHW003979
PX7020	Deposition Transcript: George Young	3/13/2018	PX7020-001	PX7020-068
PX8003	Declaration of George Young (Sherwin-Williams)	10/26/2017	PX8003-001	PX8003-008

Exhibit B

Arnold & Porter

Seth Wiener
+1 202.942.5691 Direct
Seth.Wiener@arnoldporter.com

April 19, 2018

VIA EMAIL AND UPS

Megan Granger
Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036

Re: In re Tronox Limited (FTC Docket No. 9377)

Dear Megan:

This letter services as notice, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017 in the above-captioned matter before the United States Federal Trade Commission, that Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively "Respondents") plan to introduce the following documents or transcripts containing confidential material produced by The Sherwin Williams Company at the hearing before Judge Chappell:

Bates Begin	Bates End
SHW000166	SHW000210
SHW003168	SHW003185
SHW003186	SHW003215
SHW003881	SHW003909
SHW003949	SHW003979

- October 26, 2017 email from Hugh S. Kinast to Meredith Levert re FTC's Tronox/Cristal Investigation (and accompanying attachments)
- July 20, 2017 email from Hugh S. Kinast to Meredith Levert re SHW FTC Response Comments 7-19-17 (and accompanying attachments)
- Declaration of George Young
- Deposition Transcript of George Young (and accompanying exhibits)

Per paragraph seven of the Scheduling Order, entered December 20, 2017, I inform you "of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).[1] Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge."

Sincerely,

Seth Wiener

[1] "Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence 'be placed *in camera* only (a) after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting in camera treatment or (b) after finding that the material constitutes sensitive personal information.'" *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *see also In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015).

Arnold & Porter

Seth Wiener
+1 202.942.5691 Direct
Seth.Wiener@arnoldporter.com

April 19, 2018

VIA EMAIL AND UPS

James M. Lockhart
Ballard Spahr LLP
80 South Eighth Street
4200 IDS Center
Minneapolis, MN 55402

Re: In re Tronox Limited (FTC Docket No. 9377)

Dear James:

This letter services as notice, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017 in the above-captioned matter before the United States Federal Trade Commission, that Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively "Respondents") plan to introduce certain documents or transcripts produced by or prepared, in whole or in part, by or on behalf of Valspar and Valspar Sourcing ("Valspar") in the case *Valspar Corp., et al. v. Kronos Worldwide, Inc., et al.*, No. 13-cv-3214-RHK-LIB, United States District Court for the District of Minnesota,[1] at the hearing before Judge Chappell. These documents are as follows:

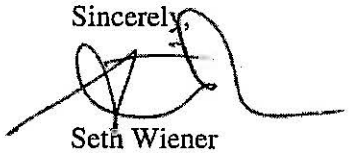
- Transcript of the Deposition of Adam J. Gildner, dated February 3, 2015
- Cristal USA Inc.'s Unredacted Answer and Counterclaim, Dkt. No. 159-1, dated April 10, 2015
- Expert Report of Robert Willig (Corrected), dated June 12, 2015

[1] As you know, Cristal USA Inc. provided notice to you in August 2017 that it was producing these and other materials from this litigation to the Federal Trade Commission in connection with the Commission's investigation of the respondents' proposed transaction.

- Transcript of the Deposition of David Murrer, dated August 19, 2015
- Cristal USA Inc.'s Memorandum of Law in Support of Motion for Summary Judgment, Dkt. No. 214-1, dated April 25, 2016
- Exhibits I-IV, B-6, B-16, C-406, C-432, C-434, C-435, C-438, C439, and D-2 of Cristal USA Inc.'s Memorandum of Law in Support of Motion for Summary Judgment, Dkt. No. 216, dated April 25, 2016

Per paragraph seven of the Scheduling Order, entered December 20, 2017, I inform you "of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).[2] Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge."

Sincerely,



Seth Wiener

[2] "Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence 'be placed *in camera* only (a) after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting in camera treatment or (b) after finding that the material constitutes sensitive personal information.'" *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *see also In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015).

Exhibit C

PUBLIC - REDACTED

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of TRONOX LIMITED, et al	)	Docket No. 9377

DECLARATION OF GEORGE YOUNG IN SUPPORT OF NON-PARTY THE SHERWIN-WILLIAMS COMPANY'S MOTION FOR *IN CAMERA* TREATMENT

I, George Young, hereby declare as follows:

1. I am the Senior Vice President for Global Procurement and Supply Chain for The Sherwin-Williams Company ("SW"). I make this declaration in support of Non-Party The Sherwin-Williams Company's Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents SW produced in the above-captioned matter in response to a civil investigative demand from the Federal Trade Commission ("FTC"), subpoenas from Complaint Counsel and subpoenas from Respondent Cristal. I provided a certification of authenticity as to the produced documents designated by Complaint Counsel as exhibits, including the documents that are the subject of the Motion. Given my position at SW, I am familiar with the type of information contained in the documents at issue and its competitive significance to SW. Based on my review of the documents, my knowledge of SW's business, and my familiarity with the confidentiality protection afforded this type of

information by SW, I submit that the disclosure of these documents to the public and to competitors and suppliers of SW would cause serious competitive injury to SW.

3. SW is among the world's major producers of architectural and industrial coatings. Architectural coatings include both interior and exterior paints, and product lines such as primers and stains. Industrial coatings include a diverse line of products, such as coil coatings, appliance coatings, marine coatings, furniture coatings, and equipment coatings. On June 1, 2017, SW acquired The Valspar Corporation ("Valspar"), which also manufactures architectural and industrial coatings.

4. My responsibilities include overseeing procurement of the raw material inputs for our different coatings products. I have been responsible for overseeing procurement since 2012. One of the most important raw material inputs is titanium dioxide (TiO2), a white pigment that provides the opacity that ensures coatings will fully cover the surfaces to which they are applied. SW uses TiO2 in most of its architectural coatings and in many of its industrial coatings products.

5. SW treats the procurement of TiO2 as a critical business function. Within SW, a dedicated, close-knit team of approximately 12 employees handles TiO2 procurement. Confidential information such as TiO2 supplier contract terms and pricing is shared with other SW employees only on a limited, "need-to-know" basis. This procurement expertise is highly valuable to SW and is critical to SW's ability to competitively source TiO2.

6. SW invests continually and substantially in research and development efforts to optimize the use of TiO2 in its coatings and to provide consumers with high-quality, dependable coating products. Coatings formulas – and technical processes for testing various grades of TiO2 in such formulas – are considered highly proprietary trade secrets within SW. SW also considers

the names of certain SW-specific TiO2 grades it has qualified for use in its coatings to be trade secrets. Indeed, as a coatings company with more than 150 years of industry experience, these trade secrets are the "secret sauce" to our business.

7. Because TiO2 is a critical input to SW's coatings, documents regarding SW's use of TiO2 (including trade secrets), SW's procurement expertise (e.g., past and future TiO2 purchasing strategy and negotiations with suppliers), SW's TiO2 purchasing data, and the identity of SW's TiO2 suppliers, including specific contract terms with those suppliers (collectively, "TiO2 Confidential Information"), are considered highly secret, competitively sensitive material. Such documents are closely guarded within SW under strict confidentiality procedures in the ordinary course of business.

8. The harm that would result from the disclosure of SW's TiO2 Confidential Information is serious and two-fold. First, with respect to SW's TiO2 suppliers, the disclosure of SW's TiO2 Confidential Information would reduce our ability to negotiate competitive terms for a critical input. Specifically, suppliers could use information such as SW's negotiation tactics, total TiO2 requirements, purchasing levels, contract terms, and prices to disadvantage SW in negotiations. A reduction in SW's ability to procure TiO2 at favorable commercial terms would harm its ability to offer competitively priced products and thus its ability to compete against its numerous coatings competitors. Second, with respect to SW's coatings competitors, the disclosure of SW's TiO2 Confidential Information would provide them with an unfair advantage over SW in negotiating supply contracts with TiO2 suppliers. For example, competitors could use this information to disrupt SW's sourcing strategy, for example by targeting SW's TiO2 suppliers and seeking to undercut SW with a more favorable purchasing program. This would reduce SW's ability to procure TiO2 on favorable commercial terms and harm its ability to offer

competitively priced products. Moreover, disclosure of SW's trade secrets would critically harm SW's competitive position as other coatings suppliers could more easily replicate its proprietary products, copy its innovations, and engage in similar R&D activities. Such an outcome would cause SW immediate and lasting economic harm.

9. Based on my review, the Confidential Documents that the litigants are proposing to introduce in this matter fall into three categories: (1) **SW's supplier identities, contract terms, and purchasing data** for TiO2; (2) **internal SW strategic analyses** of its purchase and use of TiO2; and (3) **documents from the 2015 lawsuit *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.*** which contain information in categories (1) and (2) specific to Valspar and also are subject to protective orders in the U.S. District Court for the District of Delaware, the U.S. District Court for the District of Minnesota, and the U.S. District Court for the Southern District of Texas. All of these document sets contain TiO2 Confidential Information, the competitive significance of which is unlikely to decrease over time, for reasons discussed in more detail below.

10. **SW's supplier identities, qualified grades, purchasing data, and pricing terms for TiO2** are contained in three documents (PX4022, SHW000166–SHW00021, and SHW003186–SHW003215). In PX4022, SW compiled detailed purchasing data for SW and Valspar by supplier, by product type, and by geography for the time period 2014 through 2017 in response to a civil investigative demand received from the FTC. PX4022 also contains information regarding SW's overall purchasing requirements and the effect of the Valspar acquisition on SW's requirements. The document further contains information on SW's responses to the last five announced price increases by its highest volume suppliers. All of this information is kept highly confidential and is never revealed outside the company. If disclosed,

SW would suffer irreparable harm as discussed in ¶ 8. In SHW000166-SHW000210, SW responded to a request for information ("RFI") received from the European Commission related to this matter.[1] This RFI response also contains TiO2 Confidential Information including identities of suppliers, the names of qualified TiO2 grades and their end uses, SW's views as to TiO2 quality by supplier, forward-looking TiO2 qualification plans by specific grades, and purchasing data by supplier. Disclosure of any of the highly granular information in this category would weaken SW's ability to negotiate contracts with TiO2 suppliers and disadvantage SW vis-à-vis coatings competitors as described in ¶ 8. In SHW003186–SHW003215, a supplier prepared a presentation for purposes of a "business review" with SW. This document reveals the identity of a SW supplier and, at SHW003213, provides SW's exact purchasing volume with that supplier for the time period 2014 through 2017. As discussed above, SW considers supplier-specific purchasing information to be TiO2 Confidential Information, the disclosure of which would competitively disadvantage SW.

11. The **internal SW strategic analyses** of SW's purchase and use of TiO2 contain both historical and forward-looking TiO2 Confidential Information. These five documents are PX4018, PX4020, PX4027, SHW003168–SHW003185, and SHW003881–SHW003909. PX4018 is a February 2017 document that reviews SW's TiO2 sourcing strategy and reveals the interchangeability of specific TiO2 grades within SW's product formulations (i.e. trade secrets), plans for conversion at a SW plant, and projected cost savings. PX4020 contains internal notes that SW prepared prior to its initial telephone interview with the FTC during the investigation phase of this matter. These notes similarly contain certain TiO2 Confidential Information

[1] Pursuant to European Commission procedures, SW prepared a non-confidential version of this document, a copy of which is included in Non-Public Exhibit E.

including purchasing amounts, inventory strategy, technology uses, and SW's TiO2 sourcing strategy in light of the proposed transaction between Tronox and Cristal. PX4027 is a PowerPoint presentation prepared in advance of SW meetings with TiO2 suppliers in July 2017. It reviews detailed contract terms, negotiation tactics (e.g., "supplier talking points"), purchasing data by region and supplier, names of specific qualified grades (i.e. trade secrets), strategic and product optimization initiatives by region, and overall sourcing strategies for TiO2. SHW003168–SHW003185 is a December 2016 internal analysis of the qualification of certain TiO2 grades from a specific supplier. It includes product-specific information including testing results (i.e. trade secrets), R&D project timelines, and forward-looking plans and strategies regarding TiO2 procurement. SHW003881–SHW003909 is a November 2015 Valspar document containing TiO2 spend summaries by category/supplier/region, pricing histories, contract overviews with strategic suppliers, detailed contract terms by supplier, the identity of specific qualified grades, a cost savings plan, and a 5-year sourcing plan ("key strategic initiatives"). Although this is a Valspar document, many of the Valspar strategies and plans are ongoing in the SW organization as they relate to products and business lines that SW continues to sell. As discussed above, SW considers the information in all five of these documents to be TiO2 Confidential Information, the disclosure of which would competitively disadvantage SW as described in ¶ 8.

12. In the **2015 lawsuit *Valspar Corp. et al v. Kronos Worldwide, Inc., et al.***, Valspar alleged that certain TiO2 suppliers, including Respondent Cristal, participated in a conspiracy to fix TiO2 prices. I understand that these documents were originally prepared or produced as "Confidential" or "Attorneys' Eyes Only" pursuant to (and remain subject to) protective orders in the U.S. District Court for the District of Delaware, the U.S. District Court

for the District of Minnesota, and the U.S. District Court for the Southern District of Texas.[2] Respondents have designated hundreds of pages of documents from the *Valspar Corp. et al* action as trial exhibits without specifying any portions of those documents. These documents include Cristal's Memorandum in Support of Its Motion for Summary Judgment on Valspar's Sherman Act §1 Claim and Cristal's Counterclaims Against Valspar for Breach of Contract and Fraud and related exhibits, Cristal's Amended Answer and Counterclaims, as well as two full deposition transcripts and an expert report with exhibits. Upon a high-level review, it is clear that certain portions of these documents contain Valspar's TiO2 Confidential Information, specifically negotiation tactics, supplier identities and contract terms. Although this information dates from the 2000-2015 time period, as discussed below in ¶ 14, core information regarding negotiation tactics and procurement strategies for TiO2 is worthy of indefinite confidential protection. Because Valspar employees and products are now part of SW, Valspar TiO2 Confidential Information is now proprietary to SW.

13. The litigants in this matter have also proposed to introduce the transcript of my deposition (and all accompanying exhibits, which are discussed in the categories above, where applicable[3]) and my final and draft declarations (in which I discuss in detail the topics above, including specific details on SW's use of TiO2, purchasing strategies for TiO2, specific suppliers and contract terms). The transcript of my deposition is identified as PX7020 and the declarations are identified as PX8003, FTC-PROD-0029028 – FTC-PROD-0029036, and FTC-PROD-0028885 – FTC-PROD-0028863. For the same reasons outlined above, SW requests that certain

[2] Copies of these protective orders are attached as Exhibit F.

[3] SW does not request *in camera* treatment for one document designated by Respondents: Exhibit 4 to the deposition transcript, a S&P Capital IQ copy of an SW earnings call transcript for Q2 2015 on July 16, 2015. This earnings call transcript is public information.

designated portions of these documents also receive *in camera* treatment indefinitely or, at a minimum, 10 years of *in camera* treatment. Designated versions of these documents with proposed redactions are attached as part of Non-Public Exhibit E.

14. Indefinite confidentiality is necessary to prevent competitors and suppliers from being able to gain an unfair advantage against SW by extrapolating SW's purchasing requirements, negotiating strategy, and contract terms to undercut the price at which SW can procure TiO2. [redacted]. While some of the details referenced in particular documents may change over time, the core information contained in these documents regarding SW's procurement strategy, negotiation tactics, and willingness to accept certain contract terms will remain highly competitively relevant for the foreseeable future. Consequently, the substantial competitive harm to SW that would result from disclosure is unlikely to diminish over time. Indefinite confidentiality is also necessary to protect SW's trade secrets, which appear throughout the documents at issue in this Motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed May 1, 2018 at Cleveland, Ohio.

s/George E. Young

George Young

Exhibit D

Public – Redacted

Exhibit E

Public - Redacted

Exhibit F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

THE VALSPAR CORPORATION, AND VALSPAR SOURCING, INC., Plaintiffs, v. HUNTSMAN INTERNATIONAL, LLC, Defendant.	Court File No. 4:14-cv-01130 **[PROPOSED] ORDER GRANTING STIPULATION FOR PROTECTIVE ORDER**

Pursuant to the stipulation of the parties and in accordance with Fed. R. Civ. P. 26(c) IT IS HEREBY ORDERED that:

1. This Protective Order ("Order") shall apply to all documents, records, tangible materials and other information produced, served, or disclosed in this action from the inception of the case until its conclusion, including all appeals. Material designated as "Confidential" or "Attorneys Eyes Only" shall remain "Confidential" or "Attorneys Eyes Only" thereafter, and the Parties agree that the Court shall retain continuing jurisdiction during the balance of this action and after its conclusion to enforce this Order.

2. As used in this Order, these terms have the following meanings:

a. "Attorneys" means counsel of record;

b. "Attorneys Eyes Only" Information or Items means information that consists of or documents that contain:

(1) highly sensitive financial, sales, pricing, marketing and/or strategic business planning information for the period January 2011 through the date of trial in this action, including, but not limited to, raw material pricing and supplier negotiations and communications, purchasing strategies, non-public customer communications, pricing, and information, non-public company financial information, forecasts, strategy or similar information; or

(2) paint formulas.

c. "Confidential" documents are documents designated pursuant to paragraph 3;

d. "Documents" are all materials produced in the course of discovery, all Answers to Interrogatories, all Answers to Requests for Admission, all Responses to Requests for Production of Documents, all deposition testimony and deposition exhibits, all expert reports and exhibits thereto, and filings and pleadings;

e. "Texas Action" means the above-captioned case styled as *The Valspar Corporation et al. v. Huntsman International LLC*, Case No. 4:14-cv-01130.

f. "Minnesota Action" means the case styled *The Valspar Corporation et al. v. Kronos Worldwide, Inc, et al.*, Case No. 13-3214-RHK-LIB, venued in the United States District Court for the District of Minnesota.

g. "Delaware Action" means the case styled as *The Valspar Corporation et al. v. E. I. DuPont de Nemours*, Case No. 1:14-cv-00527, venued in the United Stated District Court for the District of Delaware.

h. "Outside Vendors" means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys;

i. "Related Action" means the Minnesota Action, the Delaware Action, and any subsequent cases or proceedings that the Parties agree should be treated as "Related Actions" for the purposes of this Protective Order.

j. "Written Assurance" means an executed document in the form attached as **Exhibit A.**

3. A Party may designate a document "Confidential" to protect Documents that a Party or third party believes in good faith to contain confidential commercial, proprietary, financial or business information, trade secrets, private or personal information, or other confidential research, development, regulatory or commercial information which is, by its nature, confidential.

4. Documents shall be designated as "Confidential" by placing or affixing on the document, in a manner which shall not interfere with its legibility, the notation "CONFIDENTIAL." Documents bearing the notation "CONFIDENTIAL – 4:14-cv-01130" or similar notations are deemed notated as "CONFIDENTIAL" for the purposes of this order. Electronic or native documents or data shall be similarly marked where practicable, and where not practicable, written notification by a producing party that it is producing Documents designated as "Confidential" shall suffice. Solely for the purposes of the efficient and timely production of documents, and to avoid the need for a detailed and expensive confidentiality examination of documents the disclosure of which is not

likely to become an issue, a producing party may initially designate as "Confidential" any Document that is not publicly available.

5. All "Confidential" or "Attorneys Eyes Only" documents, along with the information contained in the documents, shall be used solely for the purpose of the Texas Action or any Related Action, and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media. No person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the documents or their contents to any person other than those specified in paragraph 5. Any other use is prohibited.

6. Access to any "Confidential" document shall be limited to:

a. Outside counsel in this or a Related Action, including any attorney of a law firm designated as attorneys of record, as well as paralegals, secretaries, and clerical staff working with such attorneys, and Outside Vendors providing services to such attorneys, such as copying services;

b. in-house litigation attorneys and paralegals for any Party;

c. independent (i.e., non-employee) persons retained by a Party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense or settlement of this action, such as independent experts, consultants, investigators, mock jurors, focus groups, or consultants, but only in accordance with the provisions of paragraph 10 hereof;

d. the Court, the Court's staff attorney(s), and judicial assistants of the Court;

e. court reporters and videographers;

f. any person identified within a specific document, including the author, addressee, or recipient of the document, or any other person who has or would have had access to the information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or director, such person must agree to be bound by the terms of this Order;

g. any former employee of a party may see documents produced by his or her former employer.

h. Two employees of a party required in good faith to provide material assistance in the conduct of the litigation of the Texas Action or a Related Action. Each party will provide advance notice to all parties of the identity of those employees. If a producing party objects, the employees at issue may not view that producing party's "Confidential" information, provided that the designating party may seek relief from the Court following a good faith meet and confer effort with the producing party to resolve the objection. In the event that any party desires to designate additional employees to provide material assistance in the conduct of the litigation of the Texas Action or a Related Action, the parties shall meet and confer regarding the designation of additional employees. If, following a good faith meet and confer effort, the parties cannot agree that additional employees may be designated, the requesting party may seek a subsequent order of this Court;

i. any other person designated by written agreement between the Parties or by subsequent order of this Court after reasonable notice to all Parties.

7. Access to any "Attorneys Eyes Only" document shall be limited to:

a. Outside counsel, including any attorney of a law firm designated as attorneys of record in this or a Related Action, as well as paralegals, secretaries and clerical staff working with such attorneys, and Outside Vendors providing services to such attorneys, such as copying services;

b. In-house litigation attorneys and paralegals for the parties;

c. independent (i.e., non-employee) persons retained by a Party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense or settlement of this action, such as independent experts, consultants, investigators, mock jurors, focus groups, or consultants, but only in accordance with the provisions of paragraph 10 hereof;

d. the Court, the Court's staff attorney(s), and juridical assistants of the Court;

e. court reporters and videographers;

f. any person identified within a specific document, including the author, addressee, or recipient of the document, or any other person who has or would have had access to the information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or director, such person must agree to be bound by the terms of this Order;

g. any former employee of a party may see documents produced by his or her former employer;

h. any other person designated by written agreement between the Parties or by subsequent order of this Court after reasonable notice to all Parties.

8. Third parties producing documents in the course of this action may also designate documents as "Confidential," or "Attorneys Eyes Only," subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as "Confidential" or "Attorneys Eyes Only" for a period of fourteen (14) business days from the date of their production, and during that period any party may designate such documents as "Confidential" or "Attorneys Eyes Only" pursuant to the terms of the Protective Order.

9. A Party that has previously produced information to another party in connection with this action may designate such information as "Confidential." Such designation shall be made within fourteen (14) business days of the entry of this Order, and in the meantime, Parties shall treat all material as designated. The previous disclosure of materials not previously designated as "Confidential" shall not be actionable, provided that no additional disclosure of those materials occurs in violation of this Order.

10. Each person appropriately designated pursuant to paragraphs 6(c), (f), (g), (h), or (i) and/or paragraphs 7(c), (f), (g), or (h) to receive "Confidential" or "Attorneys Eyes Only" information shall execute a "Written Assurance" in the form attached as **Exhibit A.**

11. All depositions or portions of depositions taken in this action that contain "Confidential" or "Attorneys Eyes Only" information may be designated "Confidential" or "Attorneys Eyes Only" and thereby obtain the protections accorded other "Confidential" or "Attorneys Eyes Only" documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within fourteen (14) business days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as "Confidential" or "Attorneys Eyes Only" during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses "Confidential" or "Attorneys Eyes Only" information shall be taken only in the presence of persons who are qualified to have access to such information. To the extent a party believes it is reasonably necessary for a noticed deponent or a person designated pursuant to Fed. R. Civ. P. 30(b)(6) to review documents or information marked "Confidential" to which that witness would not otherwise be permitted access in accordance with this Order in order to prepare testimony in connection with the Texas Action, the requesting party shall give notice to all parties 14 business days in advance of disclosure of the Confidential information and the name of the witness to whom the disclosure is sought to be made. The producing party has seven (7) business days in which to object in writing to the request. Absent objection, and upon execution by the witness of Exhibit A, the witness may review the "Confidential" documents and information identified in the notice for the limited purpose of preparing testimony for deposition. If the producing party objects to the disclosure, the parties shall meet and confer regarding the request for disclosure. If, following a

good faith meet and confer effort, the parties cannot agree, the requesting party may seek a subsequent order of this Court.

12. Any party who inadvertently fails to identify documents as "Confidential" or "Attorneys Eyes Only" shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

13. Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" under this Order, shall not be copied or otherwise reproduced except to the extent such copying or reproduction is reasonably necessary for permitted uses in the Texas Action or Related Actions. The protections conferred by this Order cover not only Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only," but also any information copied or extracted there from, as well as all copies, excerpts, summaries, or compilations thereof (hereinafter referred to collectively as "copies"), testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal the contents of Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only." However, reports of statistical experts that rely upon data that has been designated as "Confidential" or "Attorneys Eyes Only," but that do not reveal an individual party's data, are not deemed to contain "Confidential" or "Attorneys Eyes Only" information if aggregated with two or more other parties' data. All copies of

documents or information designated as "Confidential" or "Attorneys Eyes Only" under this Order or any portion thereof, shall be affixed with the notation "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" if that notation does not already appear.

14. No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by this Order unless the party claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c).

15. If a party files a document containing "Confidential" or "Attorneys Eyes Only" information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the Southern District of Texas. Prior to disclosure of materials or information designated "Confidential" or "Attorneys Eyes Only" at trial or a hearing, the parties may seek further protections against public disclosure from the Court. When filing such information under seal, the filing Party shall ensure that it is sealed in an envelope or other container which, on its face, contains the caption of the case, the identity of the Party filing the information, the complete title of the document, the document number assigned by ECF, the statement "CONFIDENTIAL-FILED UNDER SEAL," and a statement substantially in the following form:

THIS ENVELOPE CONTAINS DISCOVERY MATERIAL SUBJECT TO A PROTECTIVE ORDER ENTERED IN 4:14-cv-01130. IT IS NOT TO BE OPENED NOR THE CONTENTS THEREOF DISPLAYED, REVEALED OR MADE PUBLIC, EXCEPT BY WRITTEN ORDER OF THE COURT.

16. Any party may challenge the designation of any information designated "Confidential" or "Attorneys Eyes Only." The challenging party shall identify in writing and with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to easily locate such materials) the document(s) for which it seeks to challenge the "Confidential" or "Attorneys Eyes Only" designation. A designation challenge will trigger an obligation on the part of the producing party to make a good faith determination of whether the designation is justified. Except in the case of a designation challenge for more than 20 documents or more than 25 pages of deposition testimony, within ten (10) business days the producing party shall respond in writing to the designation challenge either agreeing to de-designate the "Confidential" or "Attorneys Eyes Only" document at issue or provide the challenging party an explanation for the designation. If a designation challenge entails more than 20 documents or more than 25 pages of deposition testimony, the challenging party and the producing party shall meet and confer, in good faith, to establish a reasonable timeframe for designation and response.

If the challenging party disagrees with a producing party's designation of material as "Confidential" or "Attorneys Eyes Only" following a designation challenge, it may move the Court for relief from the Protective Order as to the contested designation(s), providing notice to any third party whose designation of produced documents as "Confidential" or "Attorneys Eyes Only" in the action may be affected. The party asserting that the material is "Confidential" or "Attorneys Eyes Only" shall have the burden of proving that the information in question is within the scope of protection

afforded by Fed. R. Civ. P. 26(c). No presumption or weight will attach to the initial designation of a document as "Confidential" or "Attorneys Eyes Only."

Pending a ruling, the challenged material shall continue to be treated as "Confidential" or "Attorneys Eyes Only" under the terms of this Protective Order. With respect to material the parties agree is not "Confidential" or "Attorneys Eyes Only" or which the Court orders not to be treated as "Confidential" or "Attorneys Eyes Only" within ten (10) business days of such agreement or order, the producing party shall produce a new version with the confidentiality notation redacted.

Nothing in this Protective Order shall be deemed to prevent a producing party from arguing during the determination process for limits on the use or manner of dissemination of material that is found to no longer to be "Confidential" or "Attorneys Eyes Only."

A Party shall not be obligated to challenge the propriety of a designation by another party of material as "Confidential" or "Attorneys Eyes Only" at the time such designation is made, and a failure to make any such challenge shall not preclude a subsequent challenge by such Party to such designation.

17. Within sixty (60) days of the termination of this action in its entirety, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential" or "Attorneys Eyes Only," and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. Notwithstanding this provision, Attorneys are entitled to retain

an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain "Confidential" information. Any such archival copies that contain or constitute Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" remain subject to this Order..

18. Any party may apply to the Court for a modification of the Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

19. The stipulation to the terms of this Protective Order or any action taken in accordance with the Protective Order shall not be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

20. Nothing in this Order shall require disclosure of any document that a Party contends are protected from disclosure by the attorney-client privilege, joint defense privilege, work-product doctrine, or any other legally recognized privilege ("Privileged Document"). The inadvertent production of any Privileged Document shall be without prejudice to any claim that such material is privileged under the attorney-client privilege, joint defense privilege, work-product doctrine or any other legally recognized privilege, and no Party shall be held to have waived any rights by such inadvertent production. Any Privileged Document that the producing party deems to have been inadvertently disclosed shall be, upon written request, returned to the producing party within five (5) business days, or destroyed, at that party's option. If the producing party demands that

the inadvertently disclosed Privileged Document also be destroyed from the original media in which it was produced, the producing party will provide duplicate media not containing the inadvertently disclosed Privileged Document and a revised privilege log within seven (7) business days of return or notice of destruction. If the claim that the material qualifies as Privileged Document is disputed, the party disputing the assertion may maintain a single copy of the materials pending a judicial determination of the matter pursuant to Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502.

21. Nothing shall prevent disclosure beyond the terms of this Order if the Party designating the material as "Confidential" or "Attorneys Eyes Only" consents in writing to such disclosure or if this Court, after notice to all affected parties, orders such disclosure.

22. If any person receiving documents covered by this Order: (a) is subpoenaed in another action or proceeding; (b) is served with a demand in another action or proceeding to which the person or entity is a party or is otherwise involved; (c) received an open records or public information request; or (d) is served with any other process by one not a party to this litigation, which seeks material designated as "Confidential" or "Attorneys Eyes Only" by someone other than the receiving party, then the receiving party shall give actual written notice within five (5) business days of receipt of such subpoena, demand or process, to those who designated the material "Confidential" or "Attorneys Eyes Only." The receiving party shall not produce any of the "Confidential" or "Attorneys Eyes Only" information for a period of at least fourteen (14) business days, or within such lesser time period as set forth in the subpoena, demand

or process or as ordered by a court (the "Response Period"), after providing the required notice to the designating party. If, within the Response Period, the designating party gives notice to the receiving party that the designating party opposes production, the receiving party shall not thereafter produce such information except pursuant to a court order requiring compliance with the subpoena, demand or other process. The designating party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the receiving party or anyone else covered by this Order to appeal any order requiring production of "Confidential" or "Attorneys Eyes Only" information covered by this Order, or to subject himself, herself, or itself to any penalties for non compliance with any legal process order or to seek any relief from the Court.

23. In the event that any Party is served with a court order, and/or administrative or regulatory order to compel production or disclosure of any documents, materials, papers, or things that have been designated "Confidential" or "Attorneys Eyes Only," that Party shall notify, in writing, counsel of record for the other Parties to this Order within five (5) business days of the receipt of such process or order.

24. Nothing contained herein shall prevent any party from using "Confidential" or "Attorneys Eyes Only" information for a trial in this Action. The Parties agree to meet and confer prior to the filing of final exhibit lists to evaluate which of the proposed exhibits require confidential treatment for purposes of trial, if any. The confidentiality notation may be redacted by the producing party prior to trial for any use of the material at trial by any party. The parties further agree to meet and confer with any third party

whose documents will or may be used at trial concerning their appropriate treatment and to afford such third parties sufficient advance notice of any such use such that they can move to have the materials received under seal. Should any material furnished by a third party and received under seal be the subject of a motion to unseal, the parties shall give sufficient notice to the third party so that it may oppose the motion.

25. The parties agree that any disclosure of "Confidential" or "Attorneys Eyes Only" information contrary to the terms of this Order by a party or anyone acting on its, his or her behalf constitutes a violation of the Order remediable by this Court, regardless of where the disclosure occurs.

26. Any subsequent party to the litigation will be bound by this Order.

27. The obligations imposed by the Protective Order shall survive the termination of this action.

Entered this 30th day of July, 2014.

BY THE COURT:

Melinda Harmon

~~The Honorable Frances H. Stacy~~
~~Magistrate Judge of District Court~~
United States District Judge

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 Southern District of Texas on _____ in the case of *THE VALSPAR CORPORATION, et al., v. HUNTSMAN INTERNATIONAL LLC*, Case 4:14-cv-01130. 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 Southern District of Texas 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 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: _____
[printed name]

Signature: _____
[signature]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

The Valspar Corporation and
Valspar Sourcing, Inc.,

Plaintiffs,

vs. PROTECTIVE ORDER

Kronos Worldwide, Inc., and
Millennium Inorganic Chemicals, Inc.,

Defendants. Court File No. 13-3214 (RHK/LIB)

Upon consideration of the Stipulation of the parties [Docket No. 113] as modified by this Court in accordance with Fed. R. Civ. P. 26(c), it is --

HEREBY ORDERED that:

1. This Protective Order ("Order") shall apply to all documents, records, tangible materials and other information produced, served, or disclosed in this action from the inception of the case until its conclusion, including all appeals. Material designated as "Confidential" or "Attorneys Eyes Only" shall remain "Confidential" or "Attorneys Eyes Only" thereafter, and the Parties agree that the Court shall retain continuing jurisdiction during the balance of this action and after its conclusion to enforce this Order.

2. As used in this Order, these terms have the following meanings:

a. "Attorneys" means counsel of record;

b. "Attorneys Eyes Only" Information or Items means information that consists of or documents that contain:

(1) highly sensitive financial, sales, pricing, marketing and/or strategic business planning

information for the period January, 2011 through the date of trial in this action, including, but not limited to, raw material pricing and supplier negotiations and communications, purchasing strategies, non-public customer communications, pricing, and information, non-public company financial information, forecasts, strategy or similar information; or

(2) paint formulas.

c. "Confidential" documents are documents designated pursuant to paragraph 3;

d. "Documents" are all materials produced in the course of discovery, all Answers to Interrogatories, all Answers to Requests for Admission, all Responses to Requests for Production of Documents, all deposition testimony and deposition exhibits, all expert reports and exhibits thereto, and filings and pleadings;

e. "Minnesota Action" means the above-captioned matter styled *The Valspar Corporation et al. v. Kronos Worldwide, Inc., et al.*, Case No. 13-3214 (RHK/LIB).

f. "Texas Action" means the case styled as *The Valspar Corporation et al. v. Huntsman International LLC*, Case No. 4:14-cv-01130, venued in the United States District Court for the Southern District of Texas.

g. "Delaware Action" means the case styled as *The Valspar Corporation et al. v. E. I. DuPont de Nemours*, Case No. 1:14-cv-00527, venued in the United Stated District Court for the District of Delaware.

h. "Outside Vendors" means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys;

i. "Related Action" means the Texas Action, the Delaware Action, and any subsequent cases or proceedings that the Parties agree should be treated as "Related Actions" for the purposes of this Protective Order.

j. "Written Assurance" means an executed document in the form attached as **Exhibit A**.

3. A Party may designate a document "Confidential" to protect Documents that a Party or third party believes in good faith to contain confidential commercial, proprietary, financial or business information, trade secrets, private or personal information, or other confidential research, development, regulatory or commercial information which is, by its nature, confidential.

4. Documents shall be designated as "Confidential" by placing or affixing on the document, in a manner which shall not interfere with its legibility, the notation "CONFIDENTIAL." Documents bearing the notation "CONFIDENTIAL 13-3214 (RHK/LIB)" or similar notations are deemed notated as "CONFIDENTIAL" for the purposes of this Order. Electronic or native documents or data shall be similarly marked where practicable, and where not practicable, written notification by a producing party that it is producing Documents designated as "Confidential" shall suffice. Solely for the purposes of the efficient and timely production of documents, and to avoid the need for a detailed and expensive confidentiality examination of documents the disclosure of which is not likely to become an issue, a producing party may initially designate as "Confidential" any Document that is not publicly available.

5. All "Confidential" or "Attorneys Eyes Only" documents, along with the information contained in the documents, shall be used solely for the purpose of the Minnesota Action or any Related Action, and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media. No person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the

documents or their contents to any person other than those specified in paragraph 6 and 7. Any other use or communication is prohibited.

6. Access to any "Confidential" document shall be limited to:

a. outside counsel, including any attorney of a law firm designated as attorneys of record in the Minnesota Action, as well as paralegals, secretaries, and clerical staff working with such attorneys, and Outside Vendors providing services to such attorneys, such as copying services;

b. in-house litigation attorneys and paralegals for any Party;

c. independent (i.e., non-employee) persons retained by a Party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense or settlement of this action, such as independent experts, consultants, investigators, mock jurors, focus groups, or consultants, but only in accordance with the provisions of paragraph 10 hereof;

d. the Court, the Court's staff attorney(s), and judicial assistants of the Court;

e. court reporters and videographers;

f. any person identified within a specific document, including the author, addressee, or recipient of the document, or any other person who has or would have had access to the information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or director, such person must agree to be bound by the terms of this Order;

g. any former employee of a party may see documents produced by his or her former employer.

h. Two employees of a party required in good faith to provide material assistance in the conduct of the litigation of the Minnesota Action or a Related Action. Each party will provide advance notice to all parties of the identity of those employees. If a producing party objects, the employees at issue may not view that producing party's

"Confidential" information, provided that the designating party may seek relief from the Court following a good faith meet and confer effort with the producing party to resolve the objection. In the event that any party desires to designate additional employees to provide material assistance in the conduct of the litigation of the Minnesota Action or a Related Action, the parties shall meet and confer regarding the designation of additional employees. If, following a good faith meet and confer effort, the parties cannot agree that additional employees may be designated, the requesting party may seek a subsequent order of this Court;

i. any other person designated by written agreement between the Parties or by subsequent order of this Court after reasonable notice to all Parties.

7. Access to any "Attorneys Eyes Only" document shall be limited to:

a. outside counsel, including any attorney of a law firm designated as attorneys of record in the Minnesota Action, as well as paralegals, secretaries and clerical staff working with such attorneys, and Outside Vendors providing services to such attorneys, such as copying services;

b. in-house litigation attorneys and paralegals for the parties;

c. independent (i.e., non-employee) persons retained by a Party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense or settlement of this action, such as independent experts, consultants, investigators, mock jurors, focus groups, or consultants, but only in accordance with the provisions of paragraph 10 hereof;

d. the Court, the Court's staff attorney(s), and judicial assistants of the Court;

e. court reporters and videographers;

f. any person identified within a specific document, including the author, addressee, or recipient of the document, or any other person who has or would have had access to the information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or

director, such person must agree to be bound by the terms of this Order;

g. any former employee of a party may see documents produced by his or her former employer;

h. any other person designated by written agreement between the Parties or by subsequent order of this Court after reasonable notice to all Parties.

8. Third parties producing documents in the course of this action may also designate documents as "Confidential," or "Attorneys Eyes Only," subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as "Confidential" or "Attorneys Eyes Only" for a period of fourteen (14) business days from the date of their production, and during that period any party may designate such documents as "Confidential" or "Attorneys Eyes Only" pursuant to the terms of the Protective Order.

9. A Party that has previously produced information to another party in connection with this action may designate such information as "Confidential." Such designation shall be made within fourteen (14) business days of the entry of this Order, and in the meantime, Parties shall treat all material as designated. The previous disclosure of materials not previously designated as "Confidential" shall not be actionable, provided that no additional disclosure of those materials occurs in violation of this Order.

10. Each person appropriately designated pursuant to paragraphs 6(c), (f), (g), (h), or (i) and/or paragraphs 7(c), (f), (g), or (h) to receive "Confidential" or "Attorneys Eyes Only" information shall execute a "Written Assurance" in the form attached as **Exhibit A**.

11. All depositions or portions of depositions taken in this action that contain Confidential or Attorneys Eyes Only information may be designated "Confidential" or "Attorneys Eyes Only" and thereby obtain the protections accorded other "Confidential" or "Attorneys Eyes Only" documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within fourteen (14) business days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as "Confidential" or "Attorneys Eyes Only" during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses "Confidential" or "Attorneys Eyes Only" information shall be taken only in the presence of persons who are qualified to have access to such information. To the extent a party believes it is reasonably necessary for a noticed deponent or a person designated pursuant to Fed. R. Civ. P. 30(b)(6) to review documents or information marked "Confidential" to which that witness would not otherwise be permitted access in accordance with this Order in order to prepare testimony in connection with the Minnesota Action, the requesting party shall give notice to all parties 14 business days in advance of disclosure of the Confidential information and the name of the witness to whom the disclosure is sought to be made. The producing party has seven (7) business days in which to object in writing to the request. Absent objection, and upon execution by the witness of Exhibit A, the witness may review the "Confidential" documents and information identified in the notice for the limited purpose of

preparing testimony for deposition. If the producing party objects to the disclosure, the parties shall meet and confer regarding the request for disclosure. If, following a good faith meet and confer effort, the parties cannot agree, the requesting party may seek a subsequent order of this Court.

12. Any party who inadvertently fails to identify documents as "Confidential" or "Attorneys Eyes Only" shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

13. Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" under this Order, shall not be copied or otherwise reproduced except to the extent such copying or reproduction is reasonably necessary for permitted uses in the Minnesota Action or Related Actions. The protections conferred by this Order cover not only Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only," but also any information copied or extracted there from, as well as all copies, excerpts, summaries, or compilations thereof (hereinafter referred to collectively as "copies"), testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal the contents of Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only." However, reports of statistical experts that rely upon data that has been designated as "Confidential" or "Attorneys Eyes Only," but that do not reveal an individual party's data, are not deemed to contain "Confidential" or "Attorneys Eyes Only" information if aggregated with two or

more other parties' data. All copies of documents or information designated as "Confidential" or "Attorneys Eyes Only" under this Order or any portion thereof, shall be affixed with the notation "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" if that notation does not already appear.

14. No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by this Order unless the party claiming a need for greater protection first makes a formal motion and establishes good cause for an Order providing such greater protections pursuant to Fed. R. Civ. P. 26(c).

15. If a party files documents with the Court containing information designated as protected pursuant to the terms of this Order, the filings must be in compliance with the Electronic Case Filing Procedures for the District of Minnesota. The parties are advised that designation by a party of a document as protected pursuant to the terms of this Order cannot be used as the sole basis for filing the document under seal in connection with either trial or a nondispositive, dispositive, or trial related motion. Only those documents and portions of a party's submission, or any part thereof, which otherwise meets requirements for protection from public filing (including, but not limited to, a statute, rule or regulation prohibiting public disclosure, or protection under the attorney-client privilege or work product doctrine, or the standards for protection set forth in Fed. R. Civ. P. 26(c)), as first determined by the Court upon motion and a showing of good cause, shall be filed under seal. If a party intends to file with the Court a document designated by another party as protected pursuant to the terms of this Order, then that filing party shall provide reasonable advance notice to the designating party of such intent so that the designating party may determine whether or not they should bring a motion before the Court which seeks to require the protected

documents to be filed under seal. Any party which seeks to assert that a document should be filed with the Court under seal shall have the burden of demonstrating that the document should be filed under seal.

16. Any party may challenge the designation of any information designated "Confidential" or "Attorneys Eyes Only." The challenging party shall identify in writing and with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to easily locate such materials) the document(s) for which it seeks to challenge the "Confidential" or "Attorneys Eyes Only" designation. A designation challenge will trigger an obligation on the part of the producing party to make a good faith determination of whether the designation is justified. Except in the case of a designation challenge for more than 20 documents or more than 25 pages of deposition testimony, within ten (10) business days the producing party shall respond in writing to the designation challenge either agreeing to de-designate the "Confidential" or "Attorneys Eyes Only" document at issue or provide the challenging party an explanation for the designation. If a designation challenge entails more than 20 documents or more than 25 pages of deposition testimony, the challenging party and the producing party shall meet and confer, in good faith, to establish a reasonable timeframe for designation and response.

If the challenging party disagrees with a producing party's designation of material as "Confidential" or "Attorneys Eyes Only" following a designation challenge, it may move the Court for relief from the Protective Order as to the contested designation(s), providing notice to any third party whose designation of produced documents as "Confidential" or "Attorneys Eyes Only" in the action may be affected. The party asserting that the material is "Confidential" or "Attorneys Eyes

Only" shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c). No presumption or weight will attach to the initial designation of a document as "Confidential" or "Attorneys Eyes Only."

Pending a ruling, the challenged material shall continue to be treated as "Confidential" or "Attorneys Eyes Only" under the terms of this Protective Order. With respect to material the parties agree is not "Confidential" or "Attorneys Eyes Only" or which the Court orders not to be treated as "Confidential" or "Attorneys Eyes Only" within ten (10) business days of such agreement or order, the producing party shall produce a new version with the confidentiality notation redacted.

Nothing in this Protective Order shall be deemed to prevent a producing party from arguing during the determination process for limits on the use or manner of dissemination of material that is found to no longer to be "Confidential" or "Attorneys Eyes Only."

A Party shall not be obligated to challenge the propriety of a designation by another party of material as "Confidential" or "Attorneys Eyes Only" at the time such designation is made, and a failure to make any such challenge shall not preclude a subsequent challenge by such Party to such designation.

17. Within sixty (60) days of the termination of this action in its entirety, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential" or "Attorneys Eyes Only," and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. Notwithstanding this provision, Attorneys are entitled to retain an archival copy of all pleadings, motion papers,

transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain "Confidential" information. Any such archival copies that contain or constitute Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" remain subject to this Order.

18. Any party may apply to the Court for a modification of the Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

19. The stipulation to the terms of this Protective Order or any action taken in accordance with the Protective Order shall not be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

20. Nothing in this Order shall require disclosure of any document that a Party contends are protected from disclosure by the attorney-client privilege, joint defense privilege, work-product doctrine, or any other legally recognized privilege ("Privileged Document"). The inadvertent production of any Privileged Document shall be without prejudice to any claim that such material is privileged under the attorney-client privilege, joint defense privilege, work-product doctrine or any other legally recognized privilege, and no Party shall be held to have waived any rights by such inadvertent production. Any Privileged Document that the producing party deems to have been inadvertently disclosed shall be, upon written request, returned to the producing party within five (5) business days, or destroyed, at that party's option. If the producing party demands that the inadvertently disclosed Privileged Document also be destroyed from the original media in which it was produced, the producing party will provide duplicate media not containing the inadvertently

disclosed Privileged Document and a revised privilege log within seven (7) business days of return or notice of destruction. If the claim that the material qualifies as Privileged Document is disputed, the party disputing the assertion may maintain a single copy of the materials pending a judicial determination of the matter pursuant to Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502.

21. Nothing shall prevent disclosure beyond the terms of this Order if the Party designating the material as "Confidential" or "Attorneys Eyes Only" consents in writing to such disclosure or if this Court, after notice to all affected parties, orders such disclosure.

22. If any person receiving documents covered by this Order: (a) is subpoenaed in another action or proceeding; (b) is served with a demand in another action or proceeding to which the person or entity is a party or is otherwise involved; (c) received an open records or public information request; or (d) is served with any other process by one not a party to this litigation, which seeks material designated as "Confidential" or "Attorneys Eyes Only" by someone other than the receiving party, then the receiving party shall give actual written notice within five (5) business days of receipt of such subpoena, demand or process, to those who designated the material "Confidential" or "Attorneys Eyes Only." The receiving party shall not produce any of the "Confidential" or "Attorneys Eyes Only" information for a period of at least fourteen (14) business days, or within such lesser time period as set forth in the subpoena, demand or process or as ordered by a court (the "Response Period"), after providing the required notice to the designating party. If, within the Response Period, the designating party gives notice to the receiving party that the designating party opposes production, the receiving party shall not thereafter produce such information except pursuant to a court order requiring compliance with the subpoena, demand or

other process. The designating party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the receiving party or anyone else covered by this Order to appeal any order requiring production of "Confidential" or "Attorneys Eyes Only" information covered by this Order, or to subject himself, herself, or itself to any penalties for non compliance with any legal process order or to seek any relief from the Court.

23. In the event that any Party is served with a court order, and/or administrative or regulatory order to compel production or disclosure of any documents, materials, papers, or things that have been designated "Confidential" or "Attorneys Eyes Only," that Party shall notify, in writing, counsel of record for the other Parties to this Order within five (5) business days of the receipt of such process or order.

24. Nothing contained herein shall prevent any party from using "Confidential" or "Attorneys Eyes Only" information for a trial in this Action. The Parties agree to meet and confer prior to the filing of final exhibit lists to evaluate which of the proposed exhibits require confidential treatment for purposes of trial, if any. The confidentiality notation may be redacted by the producing party prior to trial for any use of the material at trial by any party. The parties further agree to meet and confer with any third party whose documents will or may be used at trial concerning their appropriate treatment and to afford such third parties sufficient advance notice of any such use such that they can move to have the materials received under seal. Should any material furnished by a third party and received under seal be the subject of a motion to unseal, the parties shall give sufficient notice to the third party so that it may oppose the motion.

25. The parties agree that any disclosure of "Confidential" or "Attorneys Eyes Only" information contrary to the terms of this Order by a party or anyone acting on its, his or her behalf constitutes a violation of the Order remediable by this Court, regardless of where the disclosure occurs.

26. Any subsequent party to the litigation will be bound by this Order.

27. The obligations imposed by the Protective Order shall survive the termination of this action.

BY THE COURT:

DATED: July 7, 2014

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

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 Protective Order that was issued by the United States District Court for the Central District of Minnesota on _____ in the case of *THE VALSPAR CORPORATION, et al., v. KRONOS WORLDWIDE, INC., et al.*, Case No. 13-3214 (RHK/LIB). I agree to comply with and to be bound by all the terms of this 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 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 District of Minnesota for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I acknowledge that I am to retain all copies of any of the materials that I receive that have been designated as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" in a matter consistent with this Order, and that all such copies are to be returned or destroyed as specified in this Order on the termination of this litigation or the completion of my dues in connection with this litigation.

I have provided in the form below either (i) my current home address and phone number, or (ii) in lieu of providing my address and phone number, I hereby appoint

_____ [print or type full name] as my Minnesota agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date: _____, 2014

City and State where sworn and signed: _____

Printed name: _____
[print name]

Signature: _____
[signature]

Signatory's or appointed agent's address:

_____

_____

_____

Signatory's or appointed agent's phone number: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE VALSPAR CORPORATION, AND VALSPAR SOURCING, INC., Plaintiffs, v. E.I. DU PONT DE NEMOURS AND COMPANY, Defendant.	C.A. No. 14-527-RGA **STIPULATION FOR PROTECTIVE ORDER**

Pursuant to Fed. R. Civ. P. 26(c), Plaintiffs The Valspar Corporation and Valspar Sourcing, Inc. ("Valspar"), and Defendant E.I. du Pont de Nemours and Company ("DuPont"), through their respective undersigned counsel, hereby stipulate and agree to the terms of the following Protective Order, pursuant to which confidential information be disclosed only in designated ways:

1. This Protective Order ("Order") shall apply to all documents, records, tangible materials and other information produced, served, or disclosed in this action from the inception of the case until its conclusion, including all appeals. Material designated as "Confidential" or "Attorneys Eyes Only" shall remain "Confidential" or "Attorneys Eyes Only" thereafter, and the parties agree that the Court shall retain continuing jurisdiction during the balance of this action and after its conclusion to enforce this Order.

2. As used in this Order, these terms have the following meanings:

a. "Attorney" means counsel of record;

b. "Attorneys Eyes Only" Information or Items means information that consists of or documents that contain:

(1) highly sensitive financial, sales, marketing and/or strategic business planning information for the period January 2011 through the date of trial in this action, including, but not limited to, raw material pricing and supplier negotiations and communications, purchasing strategies, non-public customer communications and information, non-public company financial information, forecasts, strategy or similar information; or

(2) paint formulas.

c. "Confidential" documents are documents designated pursuant to paragraph 3;

d. "Documents" are all materials produced in the course of discovery, all Answers to Interrogatories, all Answers to Requests for Admission, all Responses to Requests for Production of Documents, all deposition testimony and deposition exhibits, all expert reports and exhibits thereto, and filings and pleadings;

e. "Delaware Action" means the above-caption case styled as *The Valspar Corporation et al. v. E. I. DuPont de Nemours*, C.A. No. 14-527-RGA.

f. "Minnesota Action" means the matter styled *The Valspar Corporation et al. v. E.I. Du Pont de Nemours and Company, et al.*, Case No. 13-3214-RHK-LIB, venued in the United States District Court for the District of Minnesota.

g. "Texas Action" means the case styled as *The Valspar Corporation et al. v. Huntsman International LLC*, Case No. 4:14-cv-01130, venued in the United States District Court for the Southern District of Texas.

h. "Outside Vendors" means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys;

i. "Related Action" means the Minnesota Action, the Texas Action, and any subsequent cases or proceedings that the parties agree should be treated as "Related Actions" for the purposes of this Protective Order.

j. "Written Assurance" means an executed document in the form attached as **Exhibit A**.

3. A party may designate a document "Confidential" to protect Documents that a party or third party believes in good faith to contain confidential commercial, proprietary, financial or business information, trade secrets, private or personal information, or other confidential research, development, regulatory or commercial information which is, by its nature, confidential.

4. Documents shall be designated as "Confidential" by placing or affixing on the document, in a manner which shall not interfere with its legibility, the notation "CONFIDENTIAL." Documents bearing the notation "CONFIDENTIAL – 14-527-RGA" or similar notations as produced in a Related Action are deemed notated as "CONFIDENTIAL" for the purposes of this order. Electronic or native documents or data shall be similarly marked where practicable, and where not practicable, written notification by a producing party that it is producing Documents designated as

"Confidential" shall suffice. Solely for the purposes of the efficient and timely production of documents, and to avoid the need for a detailed and expensive confidentiality examination of documents the disclosure of which is not likely to become an issue, a producing party may initially designate as "Confidential" any Document that is not publicly available.

5. All "Confidential" or "Attorneys Eyes Only" documents, along with the information contained in the documents, shall be used solely for the purpose of the Delaware Action or any Related Action, and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media. No person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the documents or their contents to any person other than those specified in paragraph 5. Any other use is prohibited.

6. Access to any "Confidential" document shall be limited to:

a. Counsel of record in this or Related Actions, including employees of such counsel of record's law firms and Outside Vendors providing services to a party or counsel of record for purposes of this Action;

b. in-house litigation attorneys for a party who do not have any meaningful involvement in competitive or strategic business decisions regarding the purchase or sale of titanium dioxide, DuPont, or any of the parties in the related actions, and paralegals working with such in-house litigation attorneys;

c. independent (i.e., non-employee) persons retained by a party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense

or settlement of this action, such as independent experts, consultants, investigators, mock jurors, or focus groups, but only in accordance with the provisions of paragraph 10 hereof;

d. the Court, the Court's staff attorney(s), and judicial assistants of the Court;

e. court reporters and videographers;

f. any person identified within a specific document, as the author, addressee, or recipient of the document, or any other person who has or would have had access to the type of information contained in the document by virtue of his/her employment, provided that if such person is not a party's current employee, officer or director, such person must agree to be bound by the terms of this Order;

g. any person discussed within a document with respect to which they are not an author, addressee, or recipient may see the portion of such document in which he or she is discussed or identified provided that if such person is not a party's current employee, officer or director, such person must agree to be bound by the terms of this Order;

h. any former employee of a party may see documents produced by his or her former employer.

i. Two employees of a party required in good faith to provide material assistance in the conduct of the litigation of the Delaware Action or a Related Action. Each party will provide advance notice to all parties of the identity of those employees. If a producing party objects, the employees at issue may not view that producing party's

"Confidential" information, provided that the designating party may seek relief from the Court following a good faith meet and confer effort with the producing party to resolve the objection. In the event that any party desires to designate additional employees to provide material assistance in the conduct of the litigation of the Delaware Action or a Related Action, the parties shall meet and confer regarding the designation of additional employees. If, following a good faith meet and confer effort, the parties cannot agree that additional employees may be designated, the requesting party may seek a subsequent order of this Court;

j. any other person designated by written agreement between the parties or by subsequent order of this Court after reasonable notice to all parties.

7. Access to any "Attorneys Eyes Only" document shall be limited to:

a. Any attorneys of a law firm designated as attorneys of record in the Delaware Action, as well as paralegals, secretaries and clerical staff working with such attorneys, and Outside Vendors providing services to such attorneys, such as copying services;

b. in-house litigation attorneys for a party who do not have any meaningful involvement in competitive or strategic business decisions regarding the purchase or sale of titanium dioxide, DuPont, or any of the parties in the related actions, and paralegals working with such in-house litigation attorneys;

c. independent (i.e., non-employee) persons retained by a party or its Attorney solely for the purpose of assisting counsel of record in the prosecution, defense or settlement of this action, such as independent experts, consultants, investigators, mock

jurors, or focus groups, but only in accordance with the provisions of paragraph 10 hereof; ;

d. Employees of the party producing the "Attorneys Eyes Only" documents;

e. Persons shown on the face of the document to have authored or received it;

f. All authorized court personnel.

8. Third parties producing documents in the course of this action may also designate documents as "Confidential," or "Attorneys Eyes Only," subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as "Confidential" or "Attorneys Eyes Only" for a period of 14 business days from the date of their production, and during that period any party may designate such documents as "Confidential" or "Attorneys Eyes Only" pursuant to the terms of the Protective Order.

9. As of the date of this Order, documents previously produced in this action and protected in accordance with D. Del. LR 26.2 shall be governed by the terms of this Order.

10. Each person appropriately designated pursuant to paragraphs 6(c), (f), (g), (h), or (i) to receive Confidential information shall execute a "Written Assurance" in the form attached as **Exhibit A**.

11. All depositions or portions of depositions taken in this action that contain "Confidential" information may be designated "Confidential" or "Attorneys Eyes Only" and thereby obtain the protections accorded other "Confidential" or "Attorneys Eyes Only" documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 14 business days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as "Confidential" or "Attorneys Eyes Only" during the 14-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses "Confidential" or "Attorneys Eyes Only" information shall be taken only in the presence of persons who are qualified to have access to such information. To the extent a party believes it is reasonably necessary for a noticed deponent or a person designated pursuant to Fed. R. Civ. P. 30(b)(6) to review documents or information marked "Confidential" to which that witness would not otherwise be permitted access in accordance with this Order in order to prepare testimony in connection with the Delaware Action, the requesting party shall give notice to all parties 14 business days in advance of disclosure of the Confidential information. Such notice shall include the specific Confidential information and the name of the witness to whom the disclosure is sought to be made. The producing party has 7 business days in which to object in writing to the request. Absent objection, and upon execution by the witness of Exhibit A, the witness may review the "Confidential" documents and information identified in the notice for the limited purpose of preparing testimony for deposition. If the producing party objects to the disclosure, the parties shall meet and confer regarding the request for disclosure. If,

following a good faith meet and confer effort, the parties cannot agree, the requesting party may seek a subsequent order of this Court.

12. Any party who inadvertently fails to identify documents as "Confidential" or "Attorneys Eyes Only" shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

13. Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only" under this Order, shall not be copied or otherwise reproduced except to the extent such copying or reproduction is reasonably necessary for permitted uses in the Delaware Action or Related Actions. The protections conferred by this Order cover not only Documents, including, without limitation, those designated as "Confidential" or "Attorneys Eyes Only," but also any information copied or extracted there from, as well as all copies, excerpts, summaries, or compilations thereof (hereinafter referred to collectively as "copies"), testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal the contents of Documents, including, without limitation, those designated as "Confidential." or "Attorneys Eyes Only." All copies of documents or information designated as "Confidential" or "Attorneys Eyes Only" under this Order or any portion thereof, shall be affixed with the notation "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" if that notation does not already appear.

No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by this Order unless the party claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c).

14. If a party files a document containing "Confidential" or "Attorneys Eyes Only" information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the District of Delaware. When filing such information under seal, the filing party shall ensure that it is sealed in an envelope or other container which, on its face, contains the caption of the case, the identity of the party filing the information, the complete title of the document, the document number assigned by ECF, the statement "CONFIDENTIAL-FILED UNDER SEAL," and a statement substantially in the following form:

THIS ENVELOPE CONTAINS DISCOVERY MATERIAL SUBJECT TO A PROTECTIVE ORDER ENTERED IN 14-527-RGA. IT IS NOT TO BE OPENED NOR THE CONTENTS THEREOF DISPLAYED, REVEALED OR MADE PUBLIC, EXCEPT BY WRITTEN ORDER OF THE COURT.

Prior to disclosure at trial or a hearing of materials or information designated "Confidential," the parties may seek further protections against public disclosure from the Court.

15. Any party may challenge the designation of any information designated "Confidential" or "Attorneys Eyes Only." The challenging party shall identify in writing and with specificity (i.e., by document control numbers, deposition transcript page and

line reference, or other means sufficient to easily locate such materials) the document(s) for which it seeks to challenge the "Confidential" or "Attorneys Eyes Only" designation. A designation challenge will trigger an obligation on the part of the producing party to make a good faith determination of whether the designation is justified. Except in the case of a designation challenge for more than 20 documents or more than 25 pages of deposition testimony, within 10 business days the producing party shall respond in writing to the designation challenge either agreeing to de-designate the "Confidential" or "Attorneys Eyes Only" document at issue or provide the challenging party an explanation for the designation. If a designation challenge entails more than 20 documents or more than 25 pages of deposition testimony, the challenging party and the producing party shall meet and confer, in good faith, to establish a reasonable timeframe for designation and response.

If the challenging party disagrees with a producing party's designation of material as "Confidential," following a designation challenge, it may move the Court for relief from the Protective Order as to the contested designation(s), pursuant to the procedures for "Discovery Matters and Disputes Relating to Protective Orders" set forth in the Scheduling Order, providing notice to any third party whose designation of produced documents as "Confidential" or "Attorneys Eyes Only" in the action may be affected. The party asserting that the material is "Confidential" or "Attorneys Eyes Only" shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c). No presumption or weight will attach to the initial designation of a document as "Confidential" or "Attorneys Eyes Only."

Pending a ruling, the challenged material shall continue to be treated as "Confidential" or "Attorneys Eyes Only" under the terms of this Protective Order. With respect to material the parties agree is not "Confidential" or "Attorneys Eyes Only" or which the Court orders not to be treated as "Confidential" or "Attorneys Eyes Only" within 10 business days of such agreement or order, the producing party shall produce a new version with the confidentiality notation redacted.

Nothing in this Protective Order shall be deemed to prevent a producing party from arguing during the determination process for limits on the use or manner of dissemination of material that is found to no longer to be "Confidential" or "Attorneys Eyes Only."

A party shall not be obligated to challenge the propriety of a designation by another party of material as "Confidential" or "Attorneys Eyes Only" at the time such designation is made, and a failure to make any such challenge shall not preclude a subsequent challenge by such party to such designation.

16. Within 60 days of the termination of this action in its entirety, including any appeals, each party shall either destroy or return to the producing party all documents designated by the producing party as "Confidential" or "Attorneys Eyes Only," and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. Notwithstanding this provision, Attorneys are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain "Confidential"

information. Any such archival copies that contain or constitute Documents, including, without limitation, those designated as "Confidential," remain subject to this Order.

17. Any party may apply to the Court for a modification of the Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

18. The stipulation to the terms of this Protective Order or any action taken in accordance with the Protective Order shall not be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

19. Nothing in this Order shall require disclosure of any document that a party contends are protected from disclosure by the attorney-client privilege, joint defense privilege, work-product doctrine, or any other legally recognized privilege ("Privileged Document"). The inadvertent production of any Privileged Document shall be without prejudice to any claim that such material is privileged under the attorney-client privilege, joint defense privilege, work-product doctrine or any other legally recognized privilege, and no party shall be held to have waived any rights by such inadvertent production. Any Privileged Document that the producing party deems to have been inadvertently disclosed shall be, upon written request, returned to the producing party within 5 business days, or destroyed, at that party's option. If the producing party demands that the inadvertently disclosed Privileged Document also be destroyed from the original media in which it was produced, the producing party will provide duplicate media not containing the inadvertently disclosed Privileged Document and a revised privilege log within 7

business days of return or notice of destruction. If the claim that the material qualifies as Privileged Document is disputed, the party disputing the assertion may maintain a single copy of the materials pending a judicial determination of the matter pursuant to Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502.

20. Nothing shall prevent disclosure beyond the terms of this Order if the party designating the material as "Confidential" or "Attorneys Eyes Only" consents in writing to such disclosure or if this Court, after notice to all affected parties, orders such disclosure.

21. If any person receiving documents covered by this Order: (a) is subpoenaed in another action or proceeding; (b) is served with a demand in another action or proceeding to which the person or entity is a party or is otherwise involved; (c) received an open records or public information request; or (d) is served with any other process by one not a party to this litigation, which seeks material designated as "Confidential" or "Attorneys Eyes Only" by someone other than the receiving party, then the receiving party shall give written notice within 5 business days of receipt of such subpoena, demand or process, to those who designated the material "Confidential" or "Attorneys Eyes Only." The receiving party shall not produce any of the "Confidential" or "Attorneys Eyes Only" information for a period of at least 14 business days, or within such lesser time period as set forth in the subpoena, demand or process or as ordered by a court (the "Response Period"), after providing the required notice to the designating party, unless ordered to do so by a court. If, within the Response Period, the designating party gives notice to the receiving party that the designating party opposes production,

the receiving party shall not thereafter produce such information except pursuant to a court order requiring compliance with the subpoena, demand or other process. The designating party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the receiving party or anyone else covered by this Order to appeal any order requiring production of "Confidential" or "Attorneys Eyes Only" information covered by this Order, or to subject himself, herself, or itself to any penalties for non compliance with any legal process order or to seek any relief from the Court.

22. In the event that any Party is served with a court order, and/or administrative or regulatory order to compel production or disclosure of any documents, materials, papers, or things that have been designated "Confidential" or "Attorneys Eyes Only," that Party shall notify, in writing, counsel of record for the other Parties to this Order within 5 business days of the receipt of such process or order.

23. Nothing contained herein shall prevent any party from using "Confidential" or "Attorneys Eyes Only" information for a trial in this Action or a Related Action. The Parties agree to meet and confer prior to the filing of final exhibit lists to evaluate which of the proposed exhibits require confidential treatment for purposes of trial, if any. The confidentiality notation may be redacted by the producing party prior to trial for any use of the material at trial by any party. The parties further agree to meet and confer with any third party whose documents will or may be used at trial concerning their appropriate treatment and to afford such third parties sufficient advance notice of any such use such that they can move to have the materials received under seal. Should any material

furnished by a third party and received under seal be the subject of a motion to unseal, the parties shall give sufficient notice to the third party so that it may oppose the motion.

24. Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

25. The parties agree that any disclosure of "Confidential" or "Attorneys Eyes Only" information contrary to the terms of this Order by a party or anyone acting on its, his or her behalf constitutes a violation of the Order remediable by this Court, regardless of where the disclosure occurs.

26. Any subsequent party to the litigation will be bound by this Order.

27. The obligations imposed by the Protective Order shall survive the termination of this action.

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ATTORNEYS FOR DEFENDANT

DATED: _____

SO ORDERED this 15th day of Aug, 2014

Richard G. Andrews
United States District Judge

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 Central District of Delaware on _____ in the case of *THE VALSPAR CORPORATION, et al., v. E.I. DU PONT DE NEMOURS AND COMPANY, et al.*, C.A. No. 14-527-RGA. 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 District of Delaware 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 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: _____
[printed name]

Signature: _____
[signature]