

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

TOWER HILL SIGNATURE  
INSURANCE COMPANY a/s/o  
MICHAEL BURKHART and  
DEANNA BURKHART,

Plaintiffs,

v.

Case No: 2:23-cv-861-SPC-NPM

RHEEM MANUFACTURING  
COMPANY, a foreign  
corporation, BACKER ALPE, a  
foreign corporation, and HOME  
DEPOT USA, INC., a foreign  
corporation,

Defendants.

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**ORDER**

Before the Court is Defendant Backer Alpe's Motion to Dismiss Counts Three and Four of Plaintiff's First Amended Complaint. (Doc. 13). Although Plaintiff Tower Hill Signature Insurance Company opposes the Motion, it counter-moves for leave to amend the Complaint. (Doc. 18). Because Defendant does not oppose Plaintiff's request to amend, the Court will allow the amendment.

Accordingly, it is now

**ORDERED:**

1. Plaintiff Tower Hill Signature Insurance Company's Counter-Motion for Leave to Amend (Doc. 18) is **GRANTED**. The Clerk is **DIRECTED** file the Second Amended Complaint (Doc. 18-1).
2. Defendant Backer Alpe's Motion to Dismiss Counts Three and Four of Plaintiff's First Amended Complaint (Doc. 13) is **DENIED as moot**.

**DONE and ORDERED** in Fort Myers, Florida on November 8, 2023.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES DISTRICT JUDGE**

Copies: All Parties of Record