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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 REBA BAGLEY, SCOTT SILVER,
17 TOLAN BECK and ROD HUGHES,
on Behalf of Themselves and All
18 Others Similarly Situated,

19 Plaintiffs,

20 vs.

21 KB HOME, et al.,

22 Defendants.
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CASE NO. CV-07-01754 DSF (SSx)

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER
CONCERNING CONFIDENTIAL
INFORMATION

Judge: Hon. Suzanne H. Segal

1 Pursuant to Federal Rule of Civil Procedure 26(c), the Court, having
2 considered the parties' request for the following Stipulated Protective Order, hereby
3 orders as follows:

4 1. **Good Cause Statement**

5 The parties believe that they will or may be required to produce or disclose in
6 this Action, and that nonparties may produce or disclose in this Action, confidential
7 information that contains private information of a personal nature, commercially
8 sensitive or proprietary information, or trade secrets, and that, if disclosed in this
9 Action without restriction on its use or further disclosure, may cause disadvantage,
10 harm, damage and loss to the disclosing party or to the disclosing nonparty.

11 In particular, without prejudice to any party's right to object to or resist
12 disclosure of such categories of information on relevance or any other grounds, the
13 parties currently anticipate that categories of such information that may be
14 disclosed in discovery by the parties and by nonparties will or may include:

15 (1) private information of a personal nature.

16 (2) proprietary or other commercially sensitive information (as defined in
17 this Order); and

18 (3) trade secret information (as defined in this Order);

19 Materials containing private information of a personal nature, such as
20 personnel, compensation or other sensitive personal information about the parties
21 and their current and former employees, implicate constitutional and statutory
22 privacy rights, and the public release of such information could cause damage to
23 individuals' privacy interests and reputation, and jeopardize their personal and
24 financial safety. Public disclosure of materials containing proprietary or other
25 commercially sensitive information or trade secret information, such as non-public
26 financial information, strategic plans, budgets, and forecasts, could put the
27 designating party at a competitive disadvantage. Good cause also exists for this
28 Protective Order because it facilitates the production of documents that might

1 otherwise be withheld under a claim of privilege in the absence of a protective
2 order, while providing the parties with a procedure to challenge any confidential
3 designations on documents that they consider unwarranted. The parties
4 acknowledge that this Protective Order does not confer blanket protections on all
5 disclosures or responses to discovery in the above-captioned case and that the
6 protection it affords extends only to the limited information or items that are
7 entitled under the applicable legal principles to treatment as confidential.

8 The following procedures shall be followed in this Action to facilitate the
9 orderly and efficient discovery of relevant information while minimizing the
10 potential for unauthorized disclosure or use of private information of a personal
11 nature, trade secret, and proprietary or otherwise commercially sensitive
12 information:

13 2. **Material That May Be Designated Under This Protective Order.**

14 Any party to this action or any non-party (hereinafter "Designating Party")
15 may designate as "Confidential Information" any document or portion thereof, and
16 any other form of evidence or other discovery (including, but not limited to, all
17 documents, electronically stored information, and tangible things as defined in Rule
18 34(a) of the Federal Rules of Civil Procedure) ("Discovery Material") produced by
19 such party or non-party, if the Discovery Material contains:

20 (1) non-public personal or financial information of the parties, their former or
21 current employees, agents, or representatives ("Private Personal Material"). Private
22 Personal Material includes information protected by the privacy rights of
23 individuals, including information contained in personnel files, such as medical
24 information, individual wage statements, individual earnings statements, tax
25 returns, individual benefit information, social security numbers, home telephone
26 numbers and addresses, and employee disciplinary or performance evaluation
27 records; and

28 (b) commercially sensitive or proprietary information within the scope of

1 Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, such as non-public
2 financial information, strategic plans, budgets, forecasts, market surveys and
3 analyses, marketing strategies, and private contracts with third-party financial or
4 benefit plan consultants; and

5 (c) documents or information containing trade secrets, defined as any
6 formula, pattern, compilation, program, device, method, technique, or process, that
7 derives independent economic value, actual or potential, from not being generally
8 known to the public or to other persons who can obtain economic value from its
9 disclosure or use, and is the subject of efforts that are reasonable under the
10 circumstances to maintain its secrecy (“Trade Secret Material”). Trade Secret
11 Material includes Discovery Material reflecting proprietary internal manuals,
12 guidance, methodology, processes, policies, checklists, or forms used by any of the
13 parties.

14 The designation of any discovery materials as “Confidential Information”
15 pursuant to this Protective Order represents that the designating party and its
16 counsel of record each has a good faith belief that such discovery materials are,
17 indeed, confidential under the terms of this Protective Order and that such
18 designation is not for the purpose of frustrating or impeding reasonable discovery in
19 this action.

20 “Confidential Information” does not include any publicly available
21 information. The terms of this Protective Order apply to Discovery Material that
22 was produced or provided by any Designating Party prior to its entry.

23 **3. Use of Discovery Material and Confidential Information.**

24 Confidential Information, and any summaries, copies, abstracts, or other
25 documents derived in whole or in part from Confidential Information, shall be held
26 in confidence by each person to whom it is disclosed, shall be used solely for
27 purposes of this Action, and may not be disclosed to any person, except as
28 permitted in this Protective Order. Without limitation, Confidential Information

1 shall not be used, made available, or disclosed for the purposes of any other
2 litigation, judicial or administrative proceeding, dispute or case, or used for any
3 commercial, business, competitive, or other purpose. Nothing in this Protective
4 Order shall prevent the Designating Party from using or disclosing its own
5 Confidential Information for any purpose as it deems appropriate, without
6 impairing the confidentiality obligations imposed upon all other parties subject to
7 this Protective Order. However, this Protective Order does not limit or restrict any
8 party to this Action from arguing that the Designating Party's use or disclosure of
9 its own Confidential Information for a certain purpose apart from this Action
10 waived its protection as Confidential Information. In addition, nothing in this
11 Protective Order shall impose any restrictions on the use or disclosure by a Party or
12 its counsel of documents, material and/or information obtained by such Party or its
13 counsel from a source independent of the discovery proceedings in this lawsuit,
14 subject to any limitations placed on the disclosure of the documents, materials,
15 and/or information by the independent source.

16 **4. Procedure for Designating Discovery Materials.**

17 At or before the time when access or custody is given to the Receiving Party
18 (defined as a party receiving or granted access to Discovery Materials), the
19 Designating Party shall designate (in whole or in part) all Discovery Material that
20 contains Confidential Information by marking all pages or other such materials
21 subject to the claim of confidentiality as CONFIDENTIAL INFORMATION, or by
22 taking other reasonable steps to so designate the information or documents.
23 Electronic information produced in its native or other electronic format shall be
24 produced on media labeled with the legend "CONFIDENTIAL," and all such
25 electronic information shall at all times and in all forms be deemed to bear such
26 legend, and to be subject to the provisions of this Protective Order, to the same
27 extent as if it had been produced in hard copy with such legend affixed to each
28 page. If the Receiving Party transfers such data to any computer system, or other

1 storage media, or prints hard copies, the Receiving Party shall ensure that
2 reasonable steps are taken to maintain the confidentiality of such information in
3 accordance with this Protective Order as if such information had been produced in
4 hard copy bearing the same legend that is affixed to the media on which such data
5 has been produced.

6 In the event the Designating Party elects to produce Confidential
7 Information for inspection, no marking need be made by the Designating Party in
8 advance of the inspection, and all inspected materials shall be deemed to be
9 Confidential Information until the time copies of the documents that have been
10 inspected are delivered to the Receiving Party. Once copies are delivered to the
11 Receiving Party, only those materials designated CONFIDENTIAL
12 INFORMATION by the Designating Party shall be treated as such.

13 **5. Inadvertent Failure to Designate.**

14 Any Designating Party who inadvertently fails to designate its own
15 Discovery Material as Confidential Information at the time of its production or
16 disclosure shall be entitled to make a correction to its designation. Such correction
17 and notice thereof shall be made in writing, accompanied by substitute copies of
18 each item of discovery material, appropriately designated. After receiving such
19 notice, those individuals who reviewed the re-designated discovery material prior to
20 notice of the re-designation by the Designating Party shall abide by the provisions
21 of this Order with respect to all future use and disclosure of any information
22 contained in the re-designated materials.

23 **6. Procedure for Designating Deposition Testimony.**

24 At the request of any Designating Party, either made on the record during the
25 course of a deposition or within 30 days after the deposition, the deposition
26 testimony and all copies of any transcript of the deposition and any deposition
27 exhibits that contain Confidential Information may be so designated subject to this
28 Protective Order, and the original and all copies of such deposition transcripts and

1 exhibits shall be marked accordingly by the reporter or by the party or parties then
2 having possession of the original and the copies.

3 Until the designation period has elapsed for a given deposition, the transcript
4 of that deposition and associated deposition exhibits shall be treated as Confidential
5 Information and shall be subject to the provisions hereof. Further, during
6 depositions, any Party claiming that information that is to be disclosed or upon
7 which questions may be based is Confidential Information may exclude from the
8 room any person not identified in this Protective Order as a person who may access
9 Confidential Information.

10 7. **Procedure for Objection to Designation.**

11 At any time prior to trial, a party may object to the designation of any
12 Discovery Material as Confidential Information. Counsel for the objecting party
13 shall give written notice to counsel for the Designating Party, identifying the
14 designated document or information to which it objects and the reasons for its
15 objection. The Designating Party shall, within ten (10) business days after
16 receiving such notice, meet and confer with the objecting party in a good faith
17 effort to resolve the matter. Failing such resolution, the Parties shall follow the
18 procedures established by the Local Rules and by the Court's individual rules for
19 resolving discovery disputes.

20 Any Confidential Information that is the subject of a dispute over designation
21 shall be treated as Confidential Information pending the resolution of any objection.

22 8. **Access to Confidential Information by the Parties and their**
23 **Counsel.**

24 Except with the prior written consent of the Designating Party, Confidential
25 Information shall not be used, disclosed or distributed to any person other than the
26 following:

- 27 a. The named parties in these actions;
- 28 b. Current and former officers, partners, or employees of the named

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parties to this Action, and the named parties' insurers, to the extent deemed necessary by counsel for the prosecution or defense of this Action, provided, however, that those persons shall have access to Confidential Information only after they have been provided a copy of this Order for review and, prior to being shown Confidential Information, counsel makes all reasonable efforts to secure the person's execution of the Agreement to Abide by Protective Order attached hereto as Exhibit A. In circumstances in which a person refuses to sign the Agreement to Abide by Protective Order after counsel has undertaken such efforts, the person may be shown Confidential Information only after counsel reads to the person the provisions of the Agreement to Abide by Protective Order, and such person is not permitted to retain copies of such Confidential Information. This provision does not apply to named parties in the Action;

- c. Counsel for the named parties to this Action, including in-house counsel and co-counsel, and their paralegals, clerical and other assistants;
- d. As to any document, its author, its addressee(s), and any other person indicated on the face of the document;
- e. Persons retained by a party or his, her or its outside counsel to serve as expert witnesses or as consultants to provide advice to counsel in connection with this Action (subject to the additional terms set forth in Paragraph 9 below);

- 1 f. Stenographers, videographers, and their support personnel engaged
2 to transcribe and/or record depositions or testimony conducted in
3 this action;
- 4 g. The Court, its support personnel, court reporters, stenographers,
5 jurors and alternate jurors, if any;
- 6 h. Any special masters or mediators and their direct staff and counsel;
7 and,
- 8 i. Persons who are deposed or appear as witnesses in these actions
9 (and their counsel), either in preparation for or during their
10 testimony, provided, however, the prerequisites to access to such
11 Confidential Information described in section b of this Paragraph
12 are met as to such persons.

13 9. **Access to Confidential Information for Litigation Support**
14 **Services.**

15 Any Confidential Information may be disclosed to persons requested by
16 counsel to furnish services of exhibit preparation, photocopying, document coding,
17 image scanning, jury consulting, or the creation of any computer database from
18 documents containing Confidential Information, or other services provided in
19 connection with this Action, provided that such persons are informed and agree in
20 writing to of the terms of this Protective Order by signing a copy of the Agreement
21 to Abide by Protective Order attached hereto as Exhibit A.

22 10. **Access to Confidential Information by Experts.**

23 Any Confidential Information may be disclosed to experts and consultants
24 retained for this matter provided that:

- 25 a. in advance of the receipt of any Confidential Information, the
26 expert or consultant signs a copy of the Agreement to Abide by
27 Protective Order attached hereto as Exhibit A; and
28 b. the expert or consultant provides a copy of each executed

1 Agreement to Abide by Protective Order executed pursuant to this
2 paragraph to retaining counsel prior to the intended disclosure;
3 retaining counsel shall maintain the executed copies of the
4 Agreement to Abide by Protective Order, which shall not be
5 produced to counsel for the other parties except by agreement or
6 Court order.

7 If these two requirements are satisfied, the expert or consultant may fully
8 disclose any and all Confidential Information to his or her support staff/assistants,
9 provided that such persons sign a copy of the Agreement to Abide by Protective
10 Order prior to receiving any Confidential Information.

11 11. **Retention of Agreement to Abide by Protective Order.**

12 During the pendency of the Action (including any appeals), counsel must
13 retain all signed copies of the Agreement to Abide by Protective Order (i.e., Exhibit
14 A) pursuant to which it has allowed disclosure of Confidential Information in
15 accordance with the provisions of this Protective Order. Counsel for other Parties
16 may request a copy of any or all of the Agreements to Abide by Protective Order
17 and counsel agrees to meet and confer in good faith regarding the provision of a
18 copy of any or all of the Agreements to Abide by Protective Order. If the requested
19 Agreements to Abide by Protective Order are not provided to counsel, then counsel
20 may apply to the Court for an order compelling disclosure on a showing of good
21 cause.

22 12. **Submission of Confidential Information to Court In Connection**
23 **With Motions or Other Pretrial Proceedings**

24 If any party intends to submit to the Court, in connection with any motion or
25 other pretrial proceeding, any pleading, declaration or other paper containing,
26 appending, summarizing, excerpting or otherwise embodying Confidential
27 Information, that party shall file the document under seal in accordance with the
28 procedures set forth in Central District of California Local Rule 79-5. The original

1 and judge's copy of the document that includes the Confidential Information, as
2 well as quotations or substantive descriptions of the Confidential Information, shall
3 be sealed in separate envelopes or other appropriate sealed container, on which
4 shall be endorsed the title and docket number of this action, an identification of the
5 nature of the contents of the sealed envelope/container, the words "FILED UNDER
6 SEAL PURSUANT TO PROTECTIVE ORDER," or the like and a statement
7 substantially in the following form:

8 THIS ENVELOPE CONTAINS DOCUMENTS
9 SUBMITTED BY [name of party] THAT ARE
10 PROTECTED FROM DISCLOSURE BY A
11 CONFIDENTIALITY PROTECTIVE ORDER. THE
12 CONTENTS ARE TO BE FILED UNDER SEAL AND
13 NOT TO BE REVEALED TO ANYONE OTHER THAN
14 THE COURT AND ITS PERSONNEL OR ANY PARTY
15 OR ITS COUNSEL EXCEPT BY ORDER OR UNDER
16 THE DIRECTION OF THE COURT

13 **13. Use of Confidential Information At Trial.**

14 After, or in connection with, the final pretrial conference, the Parties shall
15 meet and confer to reach an agreement, subject to the approval of the Court, as to
16 the confidentiality of information to be used at trial and documents designated as
17 trial exhibits, or, if necessary, a method of resolving or maintaining the
18 confidentiality of such information and documents at trial.

19 **14. Modifications in Writing.**

20 Nothing herein shall prevent disclosure beyond the terms of this Protective
21 Order if counsel for the Designating Party consents in writing or on the record to
22 such disclosure. Any consent given under this Protective Order with respect to
23 confidentiality of the particular document shall not be deemed a waiver of any other
24 designation. The Parties may amend or modify any provision of this Protective
25 Order by mutual agreement, which agreement shall be embodied in a written
26 stipulation to be approved by the Court.

27 **15. No Waiver.**

28 Nothing in this Order shall prejudice the right of any Party to object to the

1 production of any document or part thereof upon any appropriate ground, including
2 any applicable privilege, or to object to the production of documents in a particular
3 format, and nothing herein shall be construed as a waiver of such rights. Moreover,
4 nothing in this Protective Order shall prejudice the right of any Party to object to
5 the authenticity and/or admissibility at trial of any material, whether Confidential
6 Information or not, on any appropriate ground, and nothing herein shall be
7 construed as a waiver of such right.

8 **16. Inadvertent Production of Privileged Materials.**

9 a. Designating Parties enter into this Protective Order so that they
10 may produce Discovery Material more efficiently without risk of automatic waiver
11 of privilege or work product protection.

12 b. With respect to the inadvertent production of privileged or
13 protected material, the Parties shall follow the procedures set forth in Federal Rule
14 of Civil Procedure 26(b)(5)(B); provided, however, that any notification of the
15 inadvertent production of privileged or protected material must be in writing. In the
16 event that a Receiving Party, upon reviewing any Discovery Materials, determines
17 that the Discovery Materials may contain potentially privileged information, the
18 Receiving Party must immediately refrain from further reviewing such Discovery
19 Materials and immediately notify the producing party. The producing party will
20 have ten (10) days following such notification within which to notify all Receiving
21 Parties whether such Discovery Materials contain privileged information that was
22 inadvertently produced. The Parties shall also follow Federal Rule of Evidence
23 502(b) as it relates to whether an inadvertent disclosure of privileged or protected
24 material operates as a waiver.

25 c. Regarding the inadvertent production of privileged or protected
26 material that was produced via a hard drive or other electronic form, such that it
27 cannot be detached for return, the following additional procedures shall apply: The
28 Receiving Party shall refrain from reviewing or using the material in any way,

1 pending the logging of the material on a privilege log, and the resolution of any
2 challenges to the assertion of the privilege. Upon the resolution of any such
3 challenges, the Receiving Party shall remove such material from any secondary
4 media to which the material has been transferred and destroy any hard copies that
5 have been created (including without limitation media and hard copies in the
6 possession of its counsel, witnesses, consultants, and/or experts) and, upon the
7 production of replacement media containing only the non-privileged portion of the
8 production that included the inadvertently produced privileged material, the
9 Receiving Party shall return to the producing party the original media containing
10 the inadvertently produced privileged material.

11 d. If there is a dispute as to whether the specified information is
12 privileged or subject to protection, the issue shall be presented in accordance with
13 Central District of California Local Rule 37. Until the Court makes a determination
14 as to the privilege or protected status, the Receiving Parties shall not use the
15 specified information in any way (including at depositions) or disclose the specified
16 information.

17 **17. Disposition Upon Conclusion.**

18 Within sixty (60) calendar days after final judgment (whether after settlement
19 or trial) of this action, including the time for filing and resolution of all appeals, or
20 such other period as the parties agree upon, each Receiving Party shall either (a)
21 return to the Designating Party or (b) destroy and certify such destruction to the
22 Designating Party, all documents, objects and other materials produced or
23 designated as containing Confidential Information under this Protective Order, and
24 each Receiving Party shall destroy in whatever form, stored or reproduced, all other
25 documents, objects and other materials that contain or refer to Confidential
26 Information. Notwithstanding the foregoing, counsel of record may retain copies of
27 briefs and other papers filed with the Court, deposition transcripts, and attorney
28 work product that contains or constitutes Confidential Information, so long as such

1 briefs and other papers are maintained in confidence in accordance with the
2 provisions of this Protective Order and documents designated as containing
3 Confidential Information produced by Designating Parties are returned or
4 destroyed. Also notwithstanding the foregoing, to the extent proceedings in a
5 related action are still ongoing after final judgment in this action, the Receiving
6 Party may continue to use the Designating Party's Confidential Information in
7 connection with the prosecution or defense of the ongoing related action.

8 18. **Jurisdiction.**

9 The Court retains jurisdiction to amend, to modify or to enforce this
10 Protective Order upon stipulation of the parties to this action, motion by any
11 Designating Party, or on its own motion.

12 19. **Violation of this Protective Order.**

13 In the event anyone violates or threatens to violate the terms of this
14 Protective Order, the aggrieved Designating Party may immediately apply for
15 injunctive relief against any such person violating or threatening to violate any of
16 the terms of this Protective Order. The parties and any other person subject to the
17 terms of this Protective Order agree that this Court shall retain jurisdiction over
18 them for the purpose of enforcing this Protective Order, the terms of which shall
19 survive the conclusion of this Action.

20 If Confidential Information is disclosed in violation of this Protective Order,
21 any person subject to this Protective Order who caused, permitted or was otherwise
22 responsible for the disclosure shall immediately inform the Designating Party of all
23 pertinent facts relating to the disclosure, and shall make every effort to prevent any
24 further disclosure, including any disclosure by any person who received any
25 Confidential Information in violation of this Protective Order.

26 20. **The Parties Have the Right to Seek Further Relief.**

27 This Protective Order is without prejudice to the right of a Designating Party
28 or person subject to this Protective Order to seek relief from the Court, upon good


1 cause shown, from any of the provisions or restrictions provided herein.

2 21. **Other Proceedings.**

3 Any person subject to this Protective Order who receives a subpoena or other
4 request for the production or disclosure of any Designating Party's Confidential
5 Information shall promptly give written or facsimile notice to the Designating
6 Party, identifying the information sought and enclosing a copy of the subpoena or
7 other request. The person subject to the subpoena or other request shall not produce
8 or disclose the Confidential Information without consent of the Designating Party
9 or unless failing to produce the requested information would violate the law, or
10 until ordered to do so by a court of competent jurisdiction, provided that the
11 Designating Party makes a motion or other application for relief from the subpoena
12 or other request in the appropriate forum within twenty-one (21) days from the date
13 the Designating Party receives notice of the service of the subpoena.

14
15 IT IS SO ORDERED.

16 DATED: July 15, 2009


17 Hon. Suzanne H. Segal
18 United States Magistrate Judge
19 Central District of California

1 STIPULATED AND PRESENTED BY:

2 Dated: July __, 2009 KELLER, FISHBACK & JACKSON, LLP

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2 Dated: July , 2009 MUNGER, TOLLES & OLSON LLP

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1 STIPULATED AND PRESENTED BY:

2 Dated: July _, 2009 CALDWELL LESLIE & PROCTOR

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1 STIPULATED AND PRESENTED BY:

2 Dated: July _, 2009 GIBSON DUNN & CRUTCHER

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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

REBA BAGLEY, SCOTT SILVER,
TOLAN BECK and ROD HUGHES,
on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

vs.

KB HOME, et al.,

Defendants.

CASE NO. CV-07-01754 DSF (SSx)

AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER
CONCERNING CONFIDENTIAL
INFORMATION

Judge: Suzanne H. Segal

AGREEMENT TO ABIDE BY PROTECTIVE ORDER

I have read the Protective Order applicable to the above-captioned action (the "Protective Order"). I understand its terms and agree to be fully bound by them, and hereby submit to the jurisdiction of the United States District Court, Central District of California, for purposes of the enforcement of the Protective Order. I understand, in particular, that any Confidential Information and any copies, excerpts or summaries thereof and materials containing Confidential Information derived therefrom, as well as any knowledge or information derived from, any of the aforementioned items may be used only for purposes of this litigation and may not be used for any other purpose, including without limitation, in connection with any other litigation, judicial, administrative proceeding, dispute or case, or for any

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business, competitive, or commercial purpose. I further understand that failure to abide fully by the terms of the Protective Order may result in legal action and sanctions.

Dated: _____

Agreed: _____