

1 Andrew J. Jaramillo, CA Bar No. 198303
 andrew.jaramillo@ogletreedeakins.com
 2 Elizabeth A. Falcone, SBN 219084
 elizabeth.falcone@ogletreedeakins.com
 3 Judy T. Sha, CA Bar No. 261432
 judy.sha@ogletreedeakins.com
 4 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
 Park Tower, Suite 1500
 5 695 Town Center Drive
 Costa Mesa, CA 92626
 6 Telephone: 714.800.7900
 Facsimile: 714.754.1298

7 Attorneys for Defendant
 8 THE HOME DEPOT U.S.A., INC.

NOTE CHANGES MADE BY THE COURT

9 Gregory D. Helmer, CA Bar No. 150184
 ghelmer@helmerfriedman.com
 10 Andrew H. Friedman, CA Bar No. 153166
 afriedman@helmerfriedman.com
 11 Kenneth A. Helmer, CA Bar No. 193366
 khelmer@helmerfriendman.com
 12 HELMER FRIEDMAN LLP
 723 Ocean Front Walk
 13 Venice, CA 90291
 Telephone: 310-396-7714
 14 Facsimile: 310-396-9215

15 Attorneys for Plaintiff
 DANIELLE MAILHOIT

17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

20 DANIELLE MAILHOIT,

21 Plaintiff,

22 v.

23 HOME DEPOT U.S.A., INC., a
 corporation, and DOES 1 through 50,
 24 inclusive,

25 Defendants.

Case No. CV11-03892-AHM (SSx)

[PROPOSED] ORDER

Complaint Filed: March 30, 2011
 Trial Date: July 3, 2012
 Judge: Hon. A. Howard
 Matz
 Magistrate Judge: Hon. Suzanne H.
 Segal

Case No. CV11-03892-AHM (SSx)

[PROPOSED] ORDER

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[PROPOSED] ORDER

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY

ORDERED THAT the provisions of the concurrently-filed stipulation between the parties regarding the use and protection of Confidential Information (the "Stipulated Protective Order") shall be entered as the Order of the Court and be binding upon the parties. The Court further orders that, consistent with Paragraph 4 of the parties' Stipulated Protective Order, any motion to seal records must comply with the procedures set forth in Local Rule 79-5 and must also comply with Federal Rule of Civil Procedure 26(c)(1), including that the moving party must make a good cause showing.

PURSUANT TO STIPULATION, IT IS SO ORDERED

For good cause shown. (SAS)

DATED: November 14, 2011

Suzanne H Segal

THE HON. SUZANNE H. SEGAL
MAGISTRATE JUDGE OF THE UNITED STATES DISTRICT COURT

1 Andrew J. Jaramillo, CA Bar No. 198303
andrew.jaramillo@ogletreedeakins.com
2 Elizabeth A. Falcone, SBN 219084
elizabeth.falcone@ogletreedeakins.com
3 Judy T. Sha, CA Bar No. 261432
judy.sha@ogletreedeakins.com
4 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Park Tower, Suite 1500
5 695 Town Center Drive
Costa Mesa, CA 92626
6 Telephone: 714.800.7900
Facsimile: 714.754.1298

7
8 Attorneys for Defendant
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9 Gregory D. Helmer, CA Bar No. 150184
ghelmer@helmerfriedman.com
10 Andrew H. Friedman, CA Bar No. 153166
afriedman@helmerfriedman.com
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khelmer@helmerfriendman.com
12 HELMER FRIEDMAN LLP
723 Ocean Front Walk
13 Venice, CA 90291
Telephone: 310-396-7714
14 Facsimile: 310-396-9215

NOTE CHANGES MADE BY THE COURT

15 Attorneys for Plaintiff
DANIELLE MAILHOIT

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

20 DANIELLE MAILHOIT,
21 Plaintiff,
22 v.
23 HOME DEPOT U.S.A., INC., a
corporation, and DOES 1 through 50,
24 inclusive,
25 Defendants.

Case No. CV11-03892-AHM (SSx)

**~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER**

Complaint Filed: March 30, 2011
Trial Date: July 3, 2012
Judge: Hon. A. Howard
Matz
Magistrate Judge: Hon. Suzanne H.
Segal

26
27 NOTE CHANGES MADE BY THE COURT
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1 **IT IS HEREBY STIPULATED** by and between Plaintiff Danielle Mailhoit
2 (hereinafter referred to as “Plaintiff” and/or “Mailhoit”) and Defendant The Home
3 Depot U.S.A., Inc. (erroneously sued as “Home Depot USA, Inc.”; hereinafter
4 referred to as “Defendant” and/or “Home Depot”), through their respective
5 attorneys of record, that a Protective Order be entered by this Court as follows:

6 This Stipulation and Protective Order shall be applicable to and shall apply
7 to the production and exchange of all document requests and documents,
8 interrogatories and answers to interrogatories, depositions, request for admissions,
9 and responses to requests for admissions, exhibits, and pleadings and all other
10 information exchanged and furnished in this Action by the Parties that the parties
11 customarily treat as confidential, proprietary, and/or a trade secret as defined by
12 California Civil Code Section 3426.1.

13 **1. SCOPE**

14 (a) The parties acknowledge that discovery may require disclosure of
15 information that is private and personal or confidential and proprietary, specifically
16 personnel records, employment offers, competitive analyses, income statements,
17 employee, client, or customer personal information (including, but not limited to
18 medical, age, and contact information), medical records, and financial records and
19 statements, along with other trade secret information as defined in California Civil
20 Code Section 3426.1. As a result, the parties agree to enter into a Protective Order
21 on the following terms to ensure the continuing confidentiality of such
22 information. The parties further acknowledge that this Order does not confer
23 blanket protections on all disclosures or responses to discovery and that the
24 protection it affords extends only to the limited information or items that are
25 entitled under the applicable legal principles to treatment as confidential.

26 (b) This Protective Order shall limit the use or disclosure of documents,
27 deposition testimony, and related information which are or which embody or
28 disclose any information falling within the scope of Paragraph (1)(a) and designated

1 hereunder as “Confidential,” and shall apply to:

2 (i) All such documents, including those produced by third parties,
3 designated as “Confidential” in accordance with the terms of this Protective Order
4 and the applicable legal standards;

5 (ii) Portions of deposition testimony and transcripts and exhibits
6 thereto which include, refer or relate to any Confidential Information;

7 (iii) All information, copies, extracts and complete or partial
8 summaries prepared or derived from Confidential Information; and

9 (iv) Portions of briefs, memoranda or any writing filed with or
10 otherwise supplied to the Court, which include or refer to any such Confidential
11 Information.

12 (c) Any person designating documents, testimony, or other information as
13 “Confidential” hereunder asserts that he or she believes in good faith that such
14 material is Confidential Information which falls within the scope of Paragraph
15 (1)(a) and is not otherwise available to the public generally. Each party or non-
16 party that designates information or items for protection under this Order must take
17 care to limit any such designation to specific material that qualifies under the
18 appropriate standards. A Designating Party must take care to designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify so that other portions of the material, documents,
21 items, or communications for which protection is not warranted are not swept
22 unjustifiably within the ambit of this Order.

23 **2. DESIGNATION OF DOCUMENTS AND DEPOSITIONS**

24 (a) Designation of a document as “Confidential” shall be made by
25 stamping or writing CONFIDENTIAL on the document(s). Alternatively, the
26 parties may designate documents as “Confidential” by producing the documents
27 with a letter designating the documents by Bates number as “Confidential.” The
28 parties shall make all reasonable efforts to designate as “Confidential” only those

1 documents that they reasonably believe constitute personnel records, employment
2 offers, competitive analyses, income statements, employee, client or customer
3 personal information, medical records, financial records and statements, and trade
4 secret information as defined in California Civil Code Section 3426.1. The failure
5 to designate documents as "Confidential" at the time of production shall not
6 constitute a waiver of the protection of this Order and any party may, at any time
7 up to 30 days before the actual trial date in this action, designate any documents or
8 information produced as "Confidential" that have not as yet been so designated.
9 Stamping the legend "Confidential" on the cover of any multi-page document shall
10 designate all pages of the document as confidential, unless otherwise indicated by
11 the Designating Party, but only if the entire document is produced in a bound or
12 otherwise intact manner.

13 (b) Designation of a deposition or other pretrial testimony, or portions
14 thereof, as "Confidential" shall be made by a statement on the record by counsel
15 for the party or other person making the claim of confidentiality at the time of such
16 testimony. The portions of depositions so designated as "Confidential" shall be
17 taken only in the presence of persons qualified to receive such information
18 pursuant to the terms of this Protective Order: the parties and their attorneys and
19 staff, the court reporter, videographer, the deponent, and the deponent's attorney.
20 Failure of any other person to comply with a request to leave the deposition room
21 will constitute sufficient justification for the witness to refuse to answer any
22 question calling for disclosure of Confidential Information so long as persons are
23 in attendance who are not entitled by this Protective Order to have access to such
24 information. The parties may, but need not in order to designate material as
25 Confidential Information, instruct the court reporter to segregate such portions of
26 the deposition in a separate transcript designated as "Confidential." Portions of
27 such deposition transcripts shall be clearly marked as "Confidential" on the cover
28 or on each page, as appropriate.

1 (c) Any party may designate documents produced or portions of
2 depositions taken as containing Confidential Information even if not initially
3 marked as "Confidential" in accordance with the terms of this Protective Order by
4 so advising counsel for each other party in writing and by reproducing said
5 documents with the required confidential designation. Thereafter, each such
6 document or transcript shall be treated in accordance with the terms of this
7 Protective Order; provided, however, that there shall be no liability for any
8 disclosure or use of such documents or transcripts, or the Confidential Information
9 contained therein, which occurred prior to actual receipt of such written notice.
10 Any person who receives actual notice of any such designation of previously
11 produced documents or deposition transcripts as containing Confidential
12 Information shall thereafter treat such information as if it had been designated as
13 "Confidential" at the time he, she, or it first received it in connection with this
14 matter.

15 (d) Inadvertent failure to designate Confidential Information shall not be
16 construed as a waiver, in whole or in part, and may be corrected by the producing
17 party by designating documents produced or portions of depositions taken as
18 containing Confidential Information, even if not initially marked as "Confidential,"
19 in accordance with the terms of this Protective Order and, specifically, Paragraph
20 2(c) above.

21 **3. LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL**
22 **INFORMATION**

23 (a) No Confidential Information shall be disclosed by anyone receiving
24 such information to anyone other than those persons designated herein. In no
25 event shall Confidential Information be used, either directly or indirectly, by
26 anyone receiving such information for any business, commercial or competitive
27 purpose or for any purpose whatsoever other than the direct furtherance of the
28 litigation of this action in accordance with the provisions of this Protective Order.

1 (b) Confidential Information shall not be disclosed by any person who has
2 received such information through discovery in this action to any other person,
3 except to:

4 (i) The parties;

5 (ii) Attorneys of record for the parties and their firms' associates,
6 clerks and other employees involved in the conduct of this litigation, and any court
7 reporters, videographers, or interpreters engaged to assist the parties in discovery;

8 (iii) Home Depot's, its subsidiary's, or its affiliate's in-house
9 counsel;

10 (iv) Non-party experts and consultants engaged by counsel for the
11 purpose of preparing or assisting in this litigation, and those experts' respective
12 clerks and employees involved in assisting them in this litigation, to the extent
13 deemed necessary by counsel;

14 (v) The Court, its officers, Court reporters and similar personnel,
15 provided further that Confidential Information lodged with the Court under seal is
16 subject to further evaluation by the Court;

17 (vi) Any person as to which it is apparent from the face of a
18 document was either an author, recipient, had knowledge of the contents therein, or
19 was otherwise entitled to view the Confidential Information prior to the intended
20 disclosure in this action; and

21 (vii) Any other potential witnesses whose testimony may be used in
22 connection with the present case who has complied with Paragraph 3(c)
23 immediately below.

24 (c) Before any person described in Paragraphs 3(b)(iv) and (vii) receives
25 or is shown any document or information which has been designated as
26 Confidential, such person shall be given a copy of this Protective Order and shall
27 agree in writing, in the form of the Acknowledgment and Agreement attached
28 hereto as Exhibit A, to be bound by the terms hereof. The original of each such

1 Acknowledgment and Agreement shall be maintained by counsel and, if a witness
2 appears at deposition or at trial and represents that he or she previously executed
3 an Acknowledgment, it shall be produced for inspection by opposing counsel upon
4 request. Any counsel may require the other counsel to provide a copy of the
5 Acknowledgment and Agreement signed by a witness at a deposition before the
6 witness is deposed with regard to any Confidential Information. Home Depot
7 agrees to have any of its current managerial employees execute the Agreement
8 prior to appearing for deposition and/or trial, so as to permit Plaintiff's counsel to
9 question the witness without taking time for execution of the Agreement.

10 (d) Nothing in this Protective Order shall be construed to require
11 execution of the written Acknowledgment and Agreement referred to in
12 Paragraph 3(c) above, or to prevent disclosure of Confidential Information, by the
13 party producing and designating such Confidential Information, or by any
14 employee of such party.

15 (e) The substance or content of Confidential Information, as well as all
16 notes and memoranda relating thereto, shall not be disclosed to anyone other than
17 as set forth in Paragraphs 3(b)(i)-(vii) above.

18 **4. FILING DOCUMENTS UNDER SEAL**

19 (a) If a Party wishes to submit a document to the Court which the other
20 Party has designated as Confidential or which contains Confidential Information,
21 and which has not been successfully challenged under Paragraph 5 below, such
22 ~~document shall be deemed approved for filing under seal and no further application~~
23 ~~and/or Order shall be required under Local Rule 79-5.~~ The submitting Party shall
24 ~~in all other respects~~ comply with the procedures set forth in Local Rule 79-5 and
25 Judge A. Howard Matz's Order Re: Protective Orders and Treatment of
26 Confidential Information.

27 **5. CHALLENGE TO CONFIDENTIALITY DESIGNATION**

28 Any party that wishes to challenge the designation of a document or other

follow L.R. 37.

1 information as "Confidential" must ~~identify the documents or information for~~
2 ~~which it is challenging the designation within 30 days after their production. The~~
3 ~~Designating Party may, for good cause shown, bring a motion before the Court~~
4 ~~requesting that the Court confirm the designation of any document or information~~
5 ~~as "Confidential."~~ The party asserting the designation as "Confidential" shall have
6 the burden of establishing good cause for the designation. ~~However, the Court~~
7 ~~shall be authorized to award the party who prevails on the motion attorneys' fees~~
8 ~~as a sanction if the challenge to and/or assertion of the "Confidential" designation~~
9 ~~was made in bad faith or was frivolous.~~ The interested parties or other persons
10 shall attempt to resolve such disagreements before submitting them to the Court
11 pursuant to Local Rule 37-1. Pending resolution of any dispute concerning such
12 designation, all parties and persons governed by this Protective Order shall treat all
13 documents and information previously designated as "Confidential" as protected
14 from further disclosure by this Protective Order.

15 **6. SURVIVAL OF ORDER - RETURN OF DOCUMENTS**

16 (a) The provisions of this Order shall continue in effect until otherwise
17 ordered by the Court, or after notice and an opportunity to be heard is afforded to
18 the parties to this action. The final determination or settlement of this action shall
19 not relieve any person who has received Confidential Information or agreed to be
20 bound by the terms of this Protective Order of his, her, or its obligations under this
21 stipulation and Order. The Court shall retain jurisdiction after such final
22 determination or settlement to enforce the provisions of this Order. Upon
23 completion of the litigation, all documents (including copies of documents)
24 containing Confidential Information shall be destroyed or returned to counsel for
25 the producing party, except that (a) documents on which any person has made
26 notations may be destroyed and not returned, and (b) the parties' respective
27 attorneys of record may retain one copy of each such document for use in
28 connection with any disputes which may arise under the Court's retention of

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1 jurisdiction as provided for herein. Within sixty days (60) of the conclusion of this
2 litigation, the attorneys for the receiving party shall provide the attorneys for the
3 producing party a certificate representing that such return or destruction was made.
4 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
5 all pleadings, motion papers, trial, deposition and hearing transcripts, legal
6 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
7 work product, and consultant and expert work product even if such material
8 contains Confidential Information. Any such archival copies that contain or
9 constitute Confidential Information remain subject to this Protective Order.

10 (b) Except as provided in Paragraphs 4 or 6 hereof, documents or things
11 containing the other party's Confidential Information shall at all times be in the
12 physical possession of those persons qualifying under Paragraph 3 hereunder, or
13 kept by counsel of record at the premises regularly maintained by such counsel of
14 record as and for their respective law offices.

15 ~~**7. USE OF DOCUMENTS AT TRIAL**~~ S H S

16 ~~This Stipulation and Protective Order, except as provided in Paragraph 4,
17 shall not apply to information designated or marked Confidential hereunder which
18 is used at any evidentiary hearing or trial in this action. The parties hereby reserve
19 their rights to use, or seek to limit the disclosure of, confidential information at any
20 such hearing or trial, pursuant to Judge A. Howard Matz's Order Re: Protective
21 Orders and Treatment of Confidential Information.~~

22 **8. USE OF OWN DOCUMENTS BY PRODUCING PARTY**

23 Nothing in this Protective Order shall limit the use by any party, person or
24 entity of his, her, or its own document or information for legitimate business
25 purposes unrelated to this litigation, even if such documents or information have
26 been designated as "Confidential."

27 **9. APPLICATIONS TO COURT**

28 (a) This Protective Order shall not preclude or limit any party's right to

1 oppose or object to discovery on any ground which would be otherwise available.
2 This Protective Order shall not preclude or limit any party's right to seek *in*
3 *camera* review or to seek further and additional protection against or limitation
4 upon production or dissemination of information produced in response to
5 discovery, including documents and their contents.

6 (b) Any person to or by whom disclosure or inspection is made in
7 violation of this Protective Order, and who has knowledge of this Protective Order,
8 shall be bound by the terms hereof.

9 (c) The parties hereto, and all other persons who receive Confidential
10 Information pursuant hereto, agree that any party or other person injured by a
11 violation of this Order does not have an adequate remedy at law and that an
12 injunction against such violation is an appropriate remedy. In the event any person
13 shall violate or threaten to violate any terms of this Order, the parties agree that the
14 aggrieved party may immediately apply to obtain injunctive relief against any such
15 person. In the event the aggrieved party shall do so, the responding person subject
16 to the provisions of this Order shall not employ as a defense thereto the claim that
17 the aggrieved party has an adequate remedy at law. Any persons subject to the
18 terms of this Order agree that the Court shall retain jurisdiction over it and them for
19 the purposes of enforcing this Order, including but not limited to issuing an
20 injunction. In addition to injunctive relief, as specified herein, the Court may
21 impose monetary and/or issue sanctions, as well as other relief deemed appropriate
22 under the circumstances for a violation of this Protective Order.

23 (d) If any deponent required under the terms of this Protective Order to
24 execute the written Acknowledgment and Agreement described in Paragraph 3(c)
25 above refuses to do so, the parties may complete the deposition on other matters
26 and/or adjourn it and move the Court for any appropriate relief, including (without
27 limitation) relief from this Protective Order as to that deponent, or an order that the
28 deponent shall execute the written agreement described in Paragraph 3(c) above, or

1 an order that deponent shall be bound by the terms of this Protective Order. Any
2 non-party whose Confidential Information is the subject of such a motion shall be
3 given notice thereof.

4 **10. AGREEMENT TO COOPERATE**

5 The parties hereto and their respective attorneys of record agree that, when
6 one party's attorney requests a deponent to sign the written Acknowledgment and
7 Agreement described in Paragraph 3(c) above, the other party's attorney will join
8 in such request, unless that attorney has a good faith basis for refusing to join in
9 such a request; provided, however, that this requirement shall not apply with
10 respect to any deponent who is represented at his or her deposition by an attorney
11 of record for any party hereto (including any member or associate of their
12 respective law firms). An attorney's request to sign such Acknowledgment
13 pursuant to this Paragraph shall not be construed to constitute legal advice to the
14 deponent, but shall and may be stated to be simply a request to facilitate discovery
15 in this action.

16 **11. NO ADMISSIONS**

17 Neither entering into this Stipulation for Protective Order, nor receiving any
18 documents or other information designated as "Confidential" shall be construed as
19 an agreement or admission: (1) that any document or information designated as
20 "Confidential" is in fact Confidential Information; (2) as to the correctness or truth
21 of any allegation made or position taken relative to any matter designated as
22 "Confidential"; or (3) as to the authenticity, competency, relevancy or materiality
23 of any information or document designated as "Confidential."

24 **12. NO WAIVER OF PRIVILEGES OR OBJECTIONS TO**
25 **ADMISSIBILITY**

26 Nothing in this Protective Order shall be construed as requiring disclosure of
27 Confidential Information, including, but not limited to, materials subject to
28 protection under the attorney-client privilege and/or attorney work product

1 doctrine, the trade secrets privilege, or under any other applicable privileges or
2 rights of privacy, or requiring disclosure of Confidential Information that is
3 otherwise beyond the scope of permissible discovery. Further, nothing in this
4 Protective Order shall be construed as a waiver by a party of any objections that
5 might be raised as to the admissibility at trial of any evidentiary materials.

6 **13. DISCLOSURE IN VIOLATION OF ORDER**

7 If any Confidential Information is disclosed to any person other than in the
8 manner authorized by this Protective Order, the party responsible for the disclosure
9 must immediately, in writing, notify the opposing party and the Designating Party
10 of all pertinent facts relating to such disclosure, and without prejudice to the rights
11 and remedies of the Designating Party, make every effort to prevent further
12 unauthorized disclosure.

13 **14. MODIFICATION - FURTHER AGREEMENTS**

14 Nothing contained herein shall preclude any party from seeking from a
15 Court modification of this Stipulated Protective Order ^{pursuant to LR 37} ~~upon proper notice~~, nor shall
16 anything contained herein be construed as to preclude the parties from entering
17 into other written agreements designed to protect Confidential Information.

18 **15. COUNTERPARTS**

19 This Stipulation for Protective Order may be executed in counterparts, each
20 of which shall be deemed an original and which together shall constitute one
21 instrument.

22 DATED: November 9, 2011

23 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

24
25
26 By: /s/

27 Andrew J. Jaramillo
Elizabeth A. Falcone
Judy T. Sha

28 Attorneys for Defendant

Case No. CV11-03892-AHM (SSx)

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DATED: November 9, 2011

THE HOME DEPOT U.S.A., INC.
HELMER • FRIEDMAN, LLP

By: /s/
Gregory D. Helmer, P.C.
Andrew H. Friedman, P.C.
Kenneth A. Helmer

Attorneys for Plaintiff
DANIELLE MAILHOIT

1 **CERTIFICATE OF SERVICE**
2 Mailhoit v. Home Depot U.S.A., Inc.
3 Case No: CV11-3892 AHM (SSx)

4 I am and was at all times herein mentioned over the age of 18 years and not
5 a party to the action in which this service is made. At all times herein mentioned I
6 have been employed in the County of Los Angeles in the office of a member of the
7 bar of this court at whose direction the service was made. My business address is
8 400 South Hope Street, Suite 1200, Los Angeles, California 90071.

9 On November 9, 2011, I caused to be electronically filed the following
10 document(s), described as:

11 **[PROPOSED] STIPULATED PROTECTIVE ORDER**

12 with the Clerk of the United States District Court of Central District of California,
13 using the CM/ECF System. The Court's CM/ECF System will send an e-mail
14 notification of the foregoing filing to the following parties and counsel of record
15 who are registered with the Court's CM/ECF System:

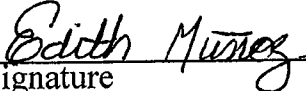
16 Kenneth A. Helmer
17 HELMER FRIEDMAN, LLP
18 723 Ocean Front Walk
19 Venice, CA 90291
20 Telephone (310) 396-7714
21 Facsimile (310) 396-9215
22 khelmer@helmerfriedman.com

Attorneys for Plaintiff DANIELLE
MAILHOIT

23 I declare that I am employed in the office of a member of the State Bar of
24 this Court at whose direction the service was made. I declare under penalty of
25 perjury under the laws of the United States of America that the above is true and
26 correct.

27 Executed on November 9, 2011, at Los Angeles, California.

28 Edith Munoz
Type or Print Name


Signature