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

21 DARRELL GREENLAND,  
 22 Plaintiff,  
 23 v.  
 24 CHERVON NORTH AMERICA, INC.,  
 25 *et al.*,  
 26 Defendants.

Case No. CV12-09747 GW- (AJWx)

**STIPULATION FOR  
 PROTECTIVE ORDER**

Judge: Hon. George H. Wu

Magistrate: Hon. Andrew J. Wistrich

27 AND RELATED COUNTERCLAIMS.  
 28

1 On consideration of the Stipulation for Protection of Confidential Materials  
2 jointly submitted by Plaintiff Darrell Greenland and Defendants Chervon North  
3 America, Inc., Menard, Inc., Lowe's Home Centers, Inc., and Lowe's HIW, Inc.,  
4 the reasons set forth therein, and it appearing to the Court that such a Protective  
5 Order is necessary and appropriate and will facilitate discovery,

6 **IT IS THEREFORE ORDERED THAT:**

7 **Stipulated Protective Order**

8 The production of documents and other disclosure of information in this  
9 litigation shall be subject to the requirements and obligations set forth herein and in  
10 accordance with Rule 26(c) of the Federal Rules of Civil Procedure.

11 **DEFINITIONS**

12 1. "Party" shall mean: any party to this action, including all of its  
13 officers, directors, employees, consultants, retained experts, and outside counsel  
14 (and their support staff).

15 2. "Disclosure or Discovery Material" shall mean: all items or  
16 information, regardless of the medium or manner generated, stored, or maintained  
17 (including, among other things, testimony, transcripts, and tangible things), that are  
18 produced or generated in disclosures or responses to discovery in this matter.

19 3. "CONFIDENTIAL" shall mean: any Party's or non-party's  
20 confidential and nonpublic information, the disclosure of which the Producing  
21 Party and/or the non-party contends could cause harm to the business operations of  
22 the Producing Party and/or the non-party, or provide improper advantage to others,  
23 and that is not otherwise marked or designated by the Producing Party as  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

25 4. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall  
26 mean: any Party's and any non-party's highly confidential and proprietary  
27 business, commercial, competitive, financial, marketing, sales and technical  
28 information

1           5.     “Receiving Party” shall mean: a Party that receives Disclosure or  
2 Discovery Material from a Producing Party.

3           6.     “Producing Party” shall mean: a Party or non-party that produces  
4 Disclosure or Discovery Material in this action.

5           7.     “Designating Party” shall mean: a Party or non-party that designates  
6 information or items that it produces in disclosures or in responses to discovery as  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
8 ONLY.”

9           8.     “Protected Material” shall mean: any Disclosure or Discovery  
10 Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
11 – ATTORNEYS’ EYES ONLY.”

12          9.     “Outside Counsel” shall mean: attorneys and their support staff who  
13 are not employees of a Party but who are retained to represent or advise a Party in  
14 this action.

15          10.    “In-House Counsel” shall mean: attorneys and their support staff who  
16 are employees of a Party.

17          11.    “Counsel” (without qualifier) shall mean: Outside Counsel and In-  
18 House Counsel as well as their respective support staff.

19          12.    “Expert” shall mean: a person with specialized knowledge or  
20 experience in a matter pertinent to the litigation who has been retained by a Party or  
21 its Counsel to serve as an expert witness or as a consultant in this action. This  
22 definition includes a professional jury or trial consultant retained in connection with  
23 this litigation. Pursuant to Section 6 below, an Expert must become a “Qualified  
24 Expert” in order to view or access material designated as “CONFIDENTIAL” or  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26          13.    “Professional Vendor” shall mean: Persons or entities that provide  
27 litigation support services (e.g., photocopying; videotaping; translating; preparing  
28

1 exhibits or demonstrations; organizing, storing, or retrieving data in any form or  
2 medium; etc.) and their employees and subcontractors.

3 **1. SCOPE**

4 The protections conferred by this Order cover not only Protected  
5 Material, but also any information copied or extracted therefrom, as well as all  
6 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations,  
7 or presentations by Parties or Counsel to or in court or in other settings that might  
8 reveal Protected Material.

9 **2. DURATION**

10 Even after the termination of this litigation, the confidentiality  
11 obligations imposed by this Order shall remain in effect until a Designating Party  
12 agrees otherwise in writing or a court order otherwise directs.

13 **3. DESIGNATING PROTECTED MATERIAL**

14 **3.1 Manner and Timing of Designations**

15 Except as otherwise provided in this Order, or as otherwise stipulated or  
16 ordered, material that qualifies for protection under this Order must be so  
17 designated before the material is disclosed or produced. Designation in conformity  
18 with this Order requires the following:

19 (a) For information in documentary form (apart from transcripts of  
20 depositions or other pretrial or trial proceedings), the Producing Party must affix  
21 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
22 EYES ONLY” at the bottom of each page that contains Protected Material. If only  
23 a portion or portions of the material qualifies for protection, the Producing Party  
24 also must clearly identify the protected portion(s) (e.g., by making appropriate  
25 markings in the margins) and must specify, for each portion, the level of protection  
26 being asserted. A Party or non-party that makes original documents or materials  
27 available for inspection need not designate them for protection until after the  
28 inspecting Party has indicated which material it would like copied and produced.

1 After the inspecting Party has identified the documents it would like copied and  
2 produced, the Producing Party must determine which documents, or portions  
3 thereof, qualify for protection under this Order, then, before producing the specified  
4 documents, the Producing Party must affix the appropriate legend  
5 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
6 ONLY”) at the bottom of each page that contains Protected Material. If only a  
7 portion or portions of the material on a page qualifies for protection, the Producing  
8 Party also must clearly identify the protected portion(s) (e.g., by making  
9 appropriate markings in the margins) and must specify, for each portion, the level  
10 of protection being asserted.

11 (b) For testimony given during a deposition or other pretrial or trial  
12 proceeding, each Party and/or each Party’s Counsel present during the giving of  
13 such testimony may identify testimony that it seeks to designate as  
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES  
15 ONLY.” Once identified as such, this material shall be designated  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES  
17 ONLY” and immediately treated as such under the provisions of this Protective  
18 Order. Each Party additionally may have up to 30 days after receipt of the formal  
19 transcript of the given testimony to identify any material that it seeks to designate  
20 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES  
21 ONLY.” The Party seeking such protection shall so notify the other Party in  
22 writing and identify the portions of the testimony for which protection is sought.  
23 Once identified, both Parties shall treat such material in accordance with the  
24 provisions in this Protective Order.

25 (c) For information produced in some form other than documentary,  
26 and for any other tangible items, the Producing Party must affix in a prominent  
27 place on the exterior of the container or containers in which the information or item  
28 is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –

1 ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant  
2 protection, the Producing Party, to the extent practicable, shall identify the  
3 protected portions, specifying whether they qualify as “CONFIDENTIAL” or as  
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5 3.2 Inadvertent Failures to Designate

6 If the Designating Party, within a reasonable time after producing documents  
7 to the Receiving Party, discovers an inadvertent failure to designate qualified  
8 information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY,” the Designating Party will not be deemed to have  
10 waived its right to secure protection under this Order for such material. The  
11 Designating Party shall, within a reasonable time, identify in writing to the  
12 Receiving Party such materials or items the Designating Party seeks to designate  
13 with the corrected level of protection indicated for those materials or items. Upon  
14 receipt of such written notification, the Receiving Party shall make reasonable  
15 efforts to assure that the material is treated in accordance with the provisions of this  
16 Order.

17 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 4.1 Timing of Challenges

19 Unless a prompt challenge to a Designating Party’s confidentiality  
20 designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
21 economic burdens, or a later significant disruption or delay of the litigation, a Party  
22 does not waive its right to challenge a confidentiality designation by electing not to  
23 pursue a challenge promptly after the original designation is disclosed.

24 4.2 Meet and Confer

25 A Party that elects to initiate a challenge to a Designating Party’s  
26 confidentiality designation must do so in good faith and must begin the process by  
27 conferring with counsel for the Designating Party. This conferring may be done by  
28 telephone. In conferring, the challenging Party must explain the basis for its belief

1 that the confidentiality designation was not proper and must give the Designating  
2 Party an opportunity to review the designated material, to reconsider the  
3 circumstances, and, if no change in designation is offered, to explain the basis for  
4 the chosen designation. A challenging Party may proceed to the next stage of the  
5 challenge process only if it has engaged in this meet and confer process first.

#### 6 4.3 Challenging a Designation

7 If the parties are unable to agree as to whether the designation of discovery  
8 material is appropriate, the party or parties receiving the Protected Materials  
9 wishing to contest the designation may file a motion with the Court with regard to  
10 any Protected Materials in dispute. All Protected Materials are entitled to  
11 confidential treatment pursuant to the terms of this Order until and unless the  
12 parties formally agree in writing to the contrary or a contrary determination is made  
13 by the Court as to whether all or a portion of the Protected Material is entitled to  
14 confidential treatment.

### 15 **5. ACCESS TO AND USE OF PROTECTED MATERIAL**

#### 16 5.1 Basic Principles

17 A Receiving Party may use Protected Material that is disclosed or produced  
18 by another Party or by a non-party in connection with this case only for  
19 prosecuting, defending, or attempting to settle this litigation. Such Protected  
20 Material may be disclosed only to the categories of persons and under the  
21 conditions described in this Order. When the litigation has been terminated, a  
22 Receiving Party must comply with the provisions of Section 10 of this Protective  
23 Order, "Final Disposition."

#### 24 25 26 5.2 Disclosure of "CONFIDENTIAL" Information

1 Unless otherwise ordered by the court upon good cause shown or permitted  
2 in writing by the Designating Party, a Receiving Party may disclose information or  
3 items designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel in this action and  
5 employees of said Outside Counsel to whom it is reasonably necessary to disclose  
6 the information for this litigation;

7 (b) the officers, directors, and employees, including In-House  
8 Counsel, of the Receiving Party to whom disclosure is reasonably necessary for this  
9 litigation;

10 (c) Experts (1) to whom disclosure is reasonably necessary for this  
11 litigation and who have signed the Acknowledgment and Agreement to Be Bound  
12 attached as Exhibit A (“Agreement to Be Bound”), and (2) who have become a  
13 Qualified Expert pursuant to the procedures set forth in Section 6;

14 (d) the Court and its personnel;

15 (e) court reporters, their staff, and Professional Vendors to whom  
16 disclosure is reasonably necessary for this litigation;

17 (f) during their depositions, witnesses in the action to whom  
18 disclosure is reasonably necessary and who have signed the Agreement to Be  
19 Bound; and

20 (g) the author of the designated document or the original source of  
21 the information, any person to whom such “CONFIDENTIAL” information was  
22 previously communicated, or any person to whom disclosure was in fact made  
23 during the regular course of business.

24 5.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
25 EYES ONLY” Information

26 Unless otherwise ordered by the court upon good cause shown, or permitted  
27 in writing by the Designating Party, a Receiving Party may only disclose  
28



1 information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
2 EYES ONLY” to:

3 (a) the Receiving Party’s Outside Counsel in this action and  
4 employees of said Outside Counsel to whom it is reasonably necessary to disclose  
5 the information for this litigation;

6 (b) Experts (1) to whom disclosure is reasonably necessary for this  
7 litigation, (2) who have signed the Agreement to Be Bound, and (3) become a  
8 Qualified Expert pursuant to the procedures set forth in Section 6;

9 (c) the Court and its personnel;

10 (d) court reporters, their staffs, and Professional Vendors to whom  
11 disclosure is reasonably necessary for this litigation; and

12 (e) the author of the designated document or the original source of  
13 the information, any person to whom such “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY” information was previously communicated, or any  
15 person to whom disclosure would have been made during the regular course of  
16 business.

17 **6. QUALIFICATION OF EXPERTS**

18 6.1 Procedure and Requirements for Qualification

19 Unless otherwise ordered by the court or agreed in writing by the  
20 Designating Party, an Expert must become authorized to view any materials  
21 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
22 ATTORNEYS’ EYES ONLY” (i.e., a “Qualified Expert”). To become a Qualified  
23 Expert, the Party retaining the Expert (the “Retaining Party”) must provide to any  
24 other Party (1) the full name of the Expert and the city and state of his or her  
25 primary residence, (2) a copy of the Expert’s current curriculum vitae, (3) the name  
26 and number of the case, filing date, and court of any litigation that the Expert has  
27 offered expert testimony, including through a declaration, report, or testimony at a  
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1 deposition or trial, during the preceding five (5) years, and (4) a signed copy of the  
2 Agreement to be Bound.

3 6.2 Objections to Qualification

4 A Party (the “Objecting Party”) that receives a request to qualify an Expert  
5 pursuant to Section 6.1 shall have five (5) court days from receipt of all information  
6 required in Section 6.1 to object in writing to an Expert becoming a Qualified  
7 Expert under Section 6.1. Any such objection must set forth in detail the grounds  
8 on which it is based. After the expiration of the 5-day period, if no objection has  
9 been asserted, the Expert will become a Qualified Expert.

10 6.3 Procedure for Responding to Objections for Qualification

11 If an objection is timely asserted, the Retaining Party must meet and confer  
12 with the Objecting Party to attempt to resolve the matter by agreement. If no  
13 agreement is reached, the Retaining Party may file a motion pursuant to Civil Local  
14 Rule 37 (and in compliance with Civil Local Rule 79-5.1, if applicable) seeking  
15 permission from the court to qualify the Expert under Section 6.1.

16 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
17 **PRODUCED IN OTHER LITIGATION**

18 If a Receiving Party is served with a subpoena or an order issued in other  
19 litigation that seeks disclosure of any information or items designated in this action  
20 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
21 ONLY,” the Receiving Party must so notify the Designating Party in writing upon  
22 learning that the subpoena or order seeks disclosure of such information or items.  
23 Such notification must include a copy of the subpoena or court order. The  
24 Receiving Party also must immediately inform in writing the Party who caused the  
25 subpoena or order to issue in the other litigation that some or all of the material  
26 covered by the subpoena or order is the subject of this Protective Order. In  
27 addition, the Receiving Party must deliver a copy of this Stipulated Protective  
28 Order promptly to the Party in the other action that caused the subpoena or order to

1 issue. The purpose of imposing these duties is to alert the interested parties to the  
2 existence of this Protective Order and to afford the Designating Party in this case an  
3 opportunity to try to protect its confidentiality interests in the court from which the  
4 subpoena or order issued. The Designating Party shall bear the burdens and the  
5 expenses of seeking protection in that court of its confidential material –

6 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED**  
7 **MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
9 Protected Material to any person or in any circumstance not authorized under this  
10 Protective Order, the Receiving Party must immediately (a) notify in writing the  
11 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
12 all copies of the Protected Material, (c) inform the person or persons to whom  
13 unauthorized disclosures were made of all the terms of this Order, and (d) request  
14 such person or persons to execute the Agreement to Be Bound.

15 **9. FILING PROTECTED MATERIAL**

16 Any filing of Protected Material may be filed under seal without a separate  
17 court order provided the pleadings have a reference to this section of this Protective  
18 Order.

19 **10. FINAL DISPOSITION**

20 Unless otherwise ordered or agreed in writing by the Producing Party, within  
21 sixty (60) days after the final termination of this action, each Receiving Party must  
22 return all Protected Material to the Producing Party or destroy all Protected  
23 Material. As used in this subdivision, “all Protected Material” includes all copies,  
24 abstracts, compilations, summaries or any other form of reproducing or capturing  
25 any of the Protected Material. Whether the Protected Material is returned or  
26 destroyed, the Receiving Party must submit a written certification to the Producing  
27 Party (and, if not the same person or entity, to the Designating Party) by the sixty-  
28 day deadline that confirms all Protected Material was returned or destroyed and

1 that affirms that the Receiving Party has not retained any copies, abstracts,  
2 compilations, summaries or other forms of reproducing or capturing any of the  
3 Protected Material or any information copied or extracted therefrom.  
4 Notwithstanding this provision, Outside Counsel are entitled to retain an archival  
5 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence  
6 and attorney work product, even if such materials contain Protected Material. Any  
7 such archival copies that contain or constitute Protected Material remain subject to  
8 this Protective Order as set forth in Section 2 of this Protective Order, "Duration."

9 **11. MISCELLANEOUS**

10 11.1 Right to Further Relief

11 Nothing in this Order abridges the right of any person to seek its  
12 modification by the Court in the future.

13 11.2 Right to Assert Other Objections

14 By stipulating to the entry of this Protective Order, no Party waives any right  
15 it otherwise would have to object to disclosing or producing any information or  
16 item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
17 Party waives any right to object on any ground to use in evidence any of the  
18 material covered by this Protective Order.

19 Dated: May 28, 2013 /s/ Patrick F. Bright  
20 Patrick F. Bright  
Attorneys for Plaintiff Darrell Greenland

21 Dated: May 28, 2013 /s/ Eric W. Hagen  
22 Eric W. Hagen  
23 Attorneys for Defendants Chervon North  
24 America, Inc.; Menard, Inc.; Lowe's Home  
Center, Inc.; and Lowe's HIW, Inc.

25 **IT IS SO ORDERED.**

26 Dated: 5/30/13 /s/ Andrew J. Wistrich  
27 **The Honorable Andrew J. Wistrich**  
28 **UNITED STATES MAGISTRATE JUDGE**

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Central District of California  
7 on \_\_\_\_\_ [date] in the case of *Darrell Greenland v. Chervon*  
8 *North America, Inc.; Menard, Inc.; Lowe's Home Center, Inc.; and Lowe's HIW,*  
9 *Inc.*, Case No. *CV12-09747 GW- (AJWx)*. I agree to comply with and to be bound  
10 by all the terms of this Stipulated Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and  
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in  
13 any manner any information or item that is subject to this Stipulated Protective  
14 Order to any person or entity except in strict compliance with the provisions of this  
15 Stipulated Protective Order.

16 I further agree to submit to the jurisdiction of the United States District Court  
17 for the Central District of California for the purpose of enforcing the terms of this  
18 Stipulated Protective Order, even if such enforcement proceedings occur after  
19 termination of this action.

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_

24 Signature: \_\_\_\_\_

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