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Hunton & Williams LLP
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

CHARLES PHILLIPS,

Plaintiff,

v.

ORCHARD SUPPLY HARDWARE
STORES CORPORATION, a Delaware
corporation, and DOES 1 through 25,
inclusive.

Defendants.

Case No.: 2:15-CV-07858-JFW (FFMx)

Hon. John F. Walter
Magistrate Judge Frederick F. Mumm

[PROPOSED] PROTECTIVE ORDER

1 [PROPOSED] ORDER

2 Pursuant to the stipulation by the Parties and good cause appearing therefor, the
3 Court HEREBY ENTERS the Parties' STIPULATED PROTECTIVE ORDER, the
4 pertinent elements of which are as follows:

5 1. DEFINITIONS

6 2.1 Action: This pending federal lawsuit, *Charles Phillips v. Orchard Supply*
7 *Hardware Corporation et al.*, Case No.: 2:15-CV-07858-JFW (FFMx).

8 2.2 Challenging Party: a Party or Non-Party that challenges the designation
9 of information or items under this Order.

10 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for protection
12 under Federal Rules of Civil Procedure 26(c), and as specified above in the Good
13 Cause Statement. "CONFIDENTIAL" Information or Items include:

14 (a) Non-public information about Plaintiff or any other individuals,
15 including personnel records, evaluations, compensation information, medical
16 information or other personal and confidential information;

17 (b) Information that is a "trade secret" as that term is defined in 18
18 U.S.C. § 1839; and/or

19 (c) Information alleged in good faith by a Party to be subject to
20 protection under the Federal Rules of Evidence and/or information that is
21 confidential, of commercial value, and/or falls into one or more of the following
22 categories:

23 1. Defendant's policies and procedures for operating its
24 facilities;

25 2. Documents that reflect the implementation of Defendant's
26 policies and procedures for operating its facilities;

27 3. Information that is protected against disclosure by a written
28 confidentiality agreement between a third party and Plaintiff or

1 Defendant;

2 4. Business plans, models, marketing analyses, sales and
3 financial statements or other sensitive business documents; and

4 5. Personal or private information about Non-Parties.

5 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as
6 their support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless of
11 the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced or
13 generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
16 expert witness or as a consultant in this Action.

17 2.8 In-House Counsel: attorneys who are employees of a Party to this
18 Action. In-House Counsel does not include Outside Counsel of Record or any other
19 outside counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a party
23 to this Action but are retained to represent or advise a party to this Action and have
24 appeared in this Action on behalf of that party or are affiliated with a law firm which
25 has appeared on behalf of that party, and includes support staff.

26 2.11 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation support
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
10 from a Producing Party.

11 2. SCOPE

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or
14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
15 compilations of Protected Material; and (3) any testimony, conversations, or
16 presentations by Parties or their Counsel that might reveal Protected Material.

17 Any use of Protected Material at trial shall be governed by the orders of the
18 trial judge. This Order does not govern the use of Protected Material at trial.

19 3. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
24 or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
26 including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law.

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1 4. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under this
4 Order must take care to limit any such designation to specific material that qualifies
5 under the appropriate standards. The Designating Party must designate for protection
6 only those parts of material, documents, items, or oral or written communications that
7 qualify so that other portions of the material, documents, items, or
8 communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating
14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix, the legend "CONFIDENTIAL"
27 (hereinafter "CONFIDENTIAL legend"), to each page that contains protected
28 material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for
4 inspection need not designate them for protection until after the inspecting
5 Party has indicated which documents it would like copied and produced.
6 During the inspection and before the designation, all of the material made
7 available for inspection shall be deemed “CONFIDENTIAL.” After the
8 inspecting Party has identified the documents it wants copied and
9 produced, the Producing Party must determine which documents, or portions
10 thereof, qualify for protection under this Order. Then, before producing the
11 specified documents, the Producing Party must affix the “CONFIDENTIAL
12 legend” to each page that contains Protected Material. If only a portion or
13 portions of the material on a page qualifies for protection, the Producing Party
14 also must clearly identify the protected portion(s) (e.g., by making appropriate
15 markings in the margins).

16 (b) for information produced in some form other than documentary
17 form and for any other tangible items, that the Producing Party affix in a
18 prominent place on the exterior of the container or containers in which the
19 information is stored the legend “CONFIDENTIAL.” If only a portion or
20 portions of the information warrants protection, the Producing Party, to the
21 extent practicable, shall identify the protected portion(s).

22 (c) where discovery material described in (a) or (b) above has previously
23 been produced, the Designating Party shall make such designation by written
24 notice to all Parties that the document(s) should be treated as “Confidential,” by
25 identifying the Disclosures or Discovery Material to be designated with
26 particularity (i.e., by production numbers where available). Upon notice of the
27 designation, all parties (i) shall make no further disclosure of the Protected
28 Material, except as provided by this Protective Order; and (ii) if such Protected

1 Material has already been disclosed to any person or in any circumstance not
2 authorized under this Protective Order, shall immediately inform the person or
3 persons to whom unauthorized disclosures were made of all the terms of this
4 Protective Order, and request such person or persons to execute the
5 “Acknowledgment and Agreement to Be Bound” (attached as Exhibit A).

6 (d) for testimony given in depositions, non-public hearing, or other non-
7 public proceeding, that the Designating Party identify the Disclosure or
8 Discovery Material on the record, before the close of the proceeding. Any
9 Party also may designate testimony that is entitled to protection by notifying all
10 Parties in writing within thirty (30) days of receipt of the transcript, of the
11 specific pages and lines of the transcript which should be treated as
12 “Confidential” thereafter. Each Party shall attach a copy of such written notice
13 or notices to the face of the transcript and each copy thereof in its possession,
14 custody or control. Unless otherwise indicated, all deposition transcripts shall
15 be treated as “Confidential” for a period of thirty (30) days after the receipt of
16 the transcript. This preliminary treatment, however, shall not limit a
17 deponent’s right to review the transcript of his or her deposition under Federal
18 Rule of Civil Procedure 30(e)(1).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive
21 the Designating Party’s right to secure protection under this Order for such material.
22 Upon timely correction of a designation, the Receiving Party must make reasonable
23 efforts to assure that the material is treated in accordance with the provisions of this
24 Order.

25 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating Party
7 has waived or withdrawn the confidentiality designation, all parties shall continue to
8 afford the material in question the level of protection to which it is entitled under the
9 Producing Party’s designation until the Court rules on the challenge.

10 6. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is
12 disclosed or produced by another Party or by a Non-Party in connection with this
13 Action only for prosecuting, defending, or attempting to settle this Action. Such
14 Protected Material may be disclosed only to the categories of persons and under the
15 conditions described in this Order. When the Action has been terminated, a
16 Receiving Party must comply with the provisions of section 13 below (FINAL
17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Order.

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 “CONFIDENTIAL” only to:

25 (a) the Receiving Party and the Receiving Party’s Counsel in this
26 Action, as well as employees of said Counsel to whom it is reasonably
27 necessary to disclose the information for this Action;

28 (b) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) the court and its personnel;

4 (d) court reporters and their staff;

5 (e) professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary for this Action and who
7 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (f) the author or recipient of a document containing the information or
9 a custodian or other person who otherwise possessed or knew the information;

10 (g) during their depositions, witnesses and attorneys for witnesses in the
11 Action to whom disclosure is reasonably necessary provided the deponent
12 agrees on the record to keep the information confidential or unless otherwise
13 agreed by the Designating Party or ordered by the court. Pages of transcribed
14 deposition testimony or exhibits to depositions that reveal Protected Material
15 may not be disclosed to anyone except as permitted under this Stipulated
16 Protective Order; and

17 (h) any mediator or settlement officer, and their supporting personnel,
18 mutually agreed upon by the Parties.

19 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
20 OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such
25 notification shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or
27 order to issue in the other litigation that some or all of the material
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1 covered by the subpoena or order is subject to this Protective Order. Such
2 notification shall include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served
6 with the subpoena or court order shall not produce any information designated
7 in this action as “CONFIDENTIAL” before a determination by the court from
8 which the subpoena or order issued, unless the Party has obtained the
9 Designating Party’s permission. The Designating Party shall bear the burden
10 and expense of seeking protection in court or other proceeding of its
11 confidential material and nothing in these provisions should be construed as
12 authorizing or encouraging a Receiving Party in this Action to disobey a
13 lawful directive from another court.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
18 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
19 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
20 persons to whom unauthorized disclosures were made of all the terms of this Order,
21 and (d) request such person or persons to execute the “Acknowledgment and
22 Agreement to Be Bound” that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), this Stipulated
3 Protective Order, once signed by the Court, shall constitute an order that the privilege
4 or protection as to an inadvertently produced document is not waived by disclosure
5 connected with the litigation pending before the court and the disclosure is also not a
6 waiver in any other federal or state proceeding.

7 10. MISCELLANEOUS

8 11.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 11.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 11.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court for a reason other than failure to comply with Civil
20 Local Rule 79-5, then the Receiving Party may file the information in the public
21 record unless otherwise instructed by the court.

22 11. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in this
26 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving Party

1 must submit a written certification to the Producing Party (and, if not the same person
2 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
3 category, where appropriate) all the Protected Material that was returned or destroyed
4 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
5 compilations, summaries or any other format reproducing or capturing any of the
6 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
7 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
8 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
9 attorney work product, and consultant and expert work product, even if such materials
10 contain Protected Material. Any such archival copies that contain or constitute
11 Protected Material remain subject to this Protective Order as set forth in Section 4
12 (DURATION).

13 12. Any violation of this Order may be punished by any and all appropriate
14 measures including, without limitation, contempt proceedings and/or monetary
15 sanctions.

16 **IT IS SO ORDERED**

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18 DATED: April 6, 2016

_____/S/ Frederick F. Mumm
19 UNITED STATES MAGISTRATE
20 JUDGE
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