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NOTE: CHANGES MADE BY THE COURT

Attorneys for Defendant, HOME DEPOT U.S.A., INC.

7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION
 10

11 MICHAEL DUROSS, an Individual,
 12 Plaintiff,
 13 v.
 14 HOME DEPOT U.S.A., INC., and
 15 DOES 1-25, Inclusive.
 16 Defendants.

Case No: 2:17-cv-07006 SJO (JPRx)

Hon. S. James Otero, United States District Judge & Hon. Jean P. Rosenbluth, United States Magistrate Judge

STIPULATED PROTECTIVE ORDER

Trial Date: None Set

19 **1. PURPOSES AND LIMITATIONS**

20 Discovery in this action is likely to involve production of confidential,
 21 proprietary, or private information for which special protection from public disclosure
 22 and from use for any purpose other than prosecuting this litigation may be warranted.
 23 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
 24 Stipulated Protective Order. The parties acknowledge that this Order does not confer
 25 blanket protections on all disclosures or responses to discovery and that the protection it
 26 affords from public disclosure and use extends only to the limited information or items
 27 that are entitled to confidential treatment under the applicable legal principles. The
 28

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1 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
2 Protective Order does not entitle them to file confidential information under seal; Civil
3 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
4 will be applied when a party seeks permission from the court to file material under seal.
5

6 **GOOD CAUSE STATEMENT**

7 Defendant HOME DEPOT U.S.A., INC. (“Home Depot”) considers its
8 procedures, operations and training materials confidential, proprietary, commercial
9 information pertaining to the internal operations of Home Depot. Home Depot maintains
10 that dissemination of any information learned throughout the pendency of this action
11 could have the same negative effect on the company as dissemination of the above-
12 referenced materials. Home Depot believes that to allow the dissemination of
13 confidential and/or proprietary information would compromise Home Depot’s market
14 position and business interests by exposing its confidential business information to
15 competitors and individuals outside the Home Depot corporation. Dissemination of these
16 materials to outside parties exposes the Company’s methodologies and could subject
17 Home Depot to unwarranted criticism from competitors or other third parties. Such
18 unwarranted criticism could have potentially damaging effects on the company’s public
19 image and affect its relationship with consumers. Further, allowing distribution of
20 Home Depot’s policies, procedures and training materials could provide potential
21 plaintiffs and attorneys with unfair and unwarranted insight into the company’s internal
22 practices which, in turn, could hinder the company in subsequent litigation.

23 As such, this action is likely to involve trade secrets, customer and pricing lists
24 and other valuable research, development, commercial, financial, technical and/or
25 proprietary information for which special protection from public disclosure and from use
26 for any purpose other than prosecution of this action is warranted. Such confidential and
27 proprietary materials and information consist of, among other things, confidential
28 business or financial information, information regarding confidential business practices,

1 or other confidential research, development, or commercial information (including
2 information implicating privacy rights of third parties), information otherwise generally
3 unavailable to the public, or which may be privileged or otherwise protected from
4 disclosure under state or federal statutes, court rules, case decisions, or common law.

5 Accordingly, to expedite the flow of information, to facilitate the prompt
6 resolution of disputes over confidentiality of discovery materials, to adequately protect
7 information the parties are entitled to keep confidential, to ensure that the parties are
8 permitted reasonable necessary uses of such material in preparation for and in the
9 conduct of trial, to address their handling at the end of the litigation, and serve the ends
10 of justice, a protective order for such information is justified in this matter. It is the
11 intent of the parties that information will not be designated as confidential for tactical
12 reasons and that nothing be so designated without a good faith belief that it has been
13 maintained in a confidential, non-public manner, and there is good cause why it should
14 not be part of the public record of this case.

15
16 **2. DEFINITIONS**

17 2.1 Action: Michael Duross v. Home Depot U.S.A., Inc., Case No. 2:17-CV-
18 07006 SJO (JPRX) (Los Angeles County Superior Court Case No. BC670877)

19 2.2 Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
22 is generated, stored or maintained) or tangible things that qualify for protection under
23 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
24 Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
26 support staff).

27 2.5 Designating Party: a Party or Non-Party that designates information or
28 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among
3 other things, testimony, transcripts, and tangible things), that are produced or generated
4 in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
7 expert witness or as a consultant in this Action.

8 2.8 House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.9 Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
14 this Action but are retained to represent or advise a party to this Action and have
15 appeared in this Action on behalf of that party or are affiliated with a law firm which has
16 appeared on behalf of that party, and includes support staff.

17 2.11 Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 2.13 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
25 their employees and subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is designated
27 as “CONFIDENTIAL.”
28

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 **3. SCOPE**

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

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

11 **4. DURATION**

12 Except as provided in Section 13, below, even after final disposition of this
13 litigation, the confidentiality obligations imposed by this Order shall remain in effect
14 until a Designating Party agrees otherwise in writing or a court order otherwise directs.
15 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
16 defenses in this Action, with or without prejudice; and (2) final judgment herein after
17 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
18 this Action, including the time limits for filing any motions or applications for
19 extension of time pursuant to applicable law.

20 **5. DESIGNATING PROTECTED MATERIAL**

21 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
22 Party or Non-Party that designates information or items for protection under this Order
23 must take care to limit any such designation to specific material that qualifies under the
24 appropriate standards. The Designating Party must designate for protection only those
25 parts of material, documents, items, or oral or written communications that qualify so
26 that other portions of the material, documents, items, or communications for which
27 protection is not warranted are not swept unjustifiably within the ambit of this Order.
28

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

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
11 must be clearly so designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains
17 protected material. If only a portion or portions of the material on a page qualifies for
18 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
19 by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for inspection need
21 not designate them for protection until after the inspecting Party has indicated which
22 documents it would like copied and produced. During the inspection and before the
23 designation, all of the material made available for inspection shall be deemed
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
25 copied and produced, the Producing Party must determine which documents, or portions
26 thereof, qualify for protection under this Order. Then, before producing the specified
27 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page
28 that contains Protected Material. If only a portion or portions of the material on a page

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

3 (b) for testimony given in depositions that the Designating Party identify the
4 Disclosure or Discovery Material on the record, before the close of the deposition all
5 protected testimony.

6 (c) for information produced in some form other than documentary and for
7 any other tangible items, that the Producing Party affix in a prominent place on the
8 exterior of the container or containers in which the information is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
10 the Producing Party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
12 to designate qualified information or items does not, standing alone, waive the
13 Designating Party’s right to secure protection under this Order for such material. Upon
14 timely correction of a designation, the Receiving Party must make reasonable efforts to
15 assure that the material is treated in accordance with the provisions of this Order.

16
17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
19 designation of confidentiality at any time that is consistent with the Court’s Scheduling
20 Order.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process under Local Rule 37.1 et seq.

23 6.3 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
25 to harass or impose unnecessary expenses and burdens on other parties) may expose
26 the Challenging Party to sanctions. Unless the Designating Party has waived or
27 withdrawn the confidentiality designation, all parties shall continue to afford the
28

1 material in question the level of protection to which it is entitled under the Producing
2 Party's designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a Receiving
9 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
16 only to:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and Professional
28 Vendors to whom disclosure is reasonably necessary for this Action and who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information;

4 (h) during their depositions, witnesses, and attorneys for witnesses, in the
5 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
6 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
7 be permitted to keep any confidential information unless they sign the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
9 by the Designating Party or ordered by the court. Pages of transcribed deposition
10 testimony or exhibits to depositions that reveal Protected Material may be separately
11 bound by the court reporter and may not be disclosed to anyone except as permitted
12 under this Stipulated Protective Order; and

13 (i) any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions or
15 appointed by the Court.

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

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

22 (a) promptly notify in writing the Designating Party. Such notification shall
23 include a copy of the subpoena or court order unless prohibited by law;

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

28 (c) cooperate with respect to all reasonable procedures sought to be pursued

1 by the Designating Party whose Protected Material may be affected.

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

10
11 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
12 **PRODUCED IN THIS LITIGATION**

13 The terms of this Order are applicable to information produced by a Non-Party in
14 this Action and designated as “CONFIDENTIAL.” Such information produced by Non-
15 Parties in connection with this litigation is protected by the remedies and relief provided
16 by this Order. Nothing in these provisions should be construed as prohibiting a Non-
17 Party from seeking additional protections.

18 (a) In the event that a Party is required, by a valid discovery request, to
19 produce a Non-Party’s confidential information in its possession, and the Party is subject
20 to an agreement with the Non-Party not to produce the Non-Party’s confidential
21 information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party
23 that some or all of the information requested is subject to a confidentiality agreement
24 with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably
27 specific description of the information requested; and

28 (3) make the information requested available for inspection by the Non-

1 Party, if requested.

2 (b) If the Non-Party fails to seek a protective order from this court within 14
3 days of receiving the notice and accompanying information, the Receiving Party may
4 produce the Non-Party's confidential information responsive to the discovery request. If
5 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
6 information in its possession or control that is subject to the confidentiality agreement
7 with the Non-Party before a determination by the court. Absent a court order to the
8 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
9 court of its Protected Material.

10
11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

20
21 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
22 **OTHERWISE PROTECTED MATERIAL**

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other protection, the
25 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
26 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
27 may be established in an e-discovery order that provides for production without prior
28 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

1 parties reach an agreement on the effect of disclosure of a communication or information
2 covered by the attorney-client privilege or work product protection, the parties may
3 incorporate their agreement in the stipulated protective order submitted to the court
4 provided the Court so allows.

5 ///

6 **12. MISCELLANEOUS**

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in this
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
13 to use in evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
15 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
16 under seal pursuant to a court order authorizing the sealing of the specific Protected
17 Material at issue. If a Party's request to file Protected Material under seal is denied by
18 the court, then the Receiving Party may file the information in the public record unless
19 otherwise instructed by the court.

20
21 **13. FINAL DISPOSITION**

22 After the final disposition of this Action, as defined in paragraph 4, within 60
23 days of a written request by the Designating Party, each Receiving Party must return all
24 Protected Material to the Producing Party or destroy such material. As used in this
25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected Material.
27 Whether the Protected Material is returned or destroyed, the Receiving Party must
28 submit a written certification to the Producing Party (and, if not the same person or

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

14 **14. BREACH**

15 Any violation of this Order may be punished by any and all available legal
16 measures.

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7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8
9 DATED: December 21, 2017

10
11 /S/ NICHOLAS SICILIANO
12 Nicholas A. Siciliano, Esq.
13 Law Offices of Nicholas A. Siciliano
14 Attorney for Plaintiff, MICHAEL DUROSS

15 DATED: December 21, 2017

16 /S/ AMY ARSENEAUX
17 Stephen M. Harber
18 David M. Gillen
19 Amy Arseneaux
20 McCune & Harber, LLP
21 Attorneys for Defendant, HOME DEPOT U.S.A., INC.

22 **SIGNATURE CERTIFICATION**

23 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies
24 and Procedures Manual, I hereby certify that the content of this document is acceptable
25 to Nicholas Siciliano, counsel for Plaintiff MICHAEL DUROSS, and that I have
26 obtained his authorization to affix his electronic signatures to this document.

27 /S/ AMY ARSENEAUX
28 AMY ARSENEAUX

1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

2
3 DATED: January 3, 2018

4 

5 _____
6 Hon. Jean P. Rosenbluth
7 United States Magistrate Judge

8 **EXHIBIT A**

9 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

10 I, _____, [print or type full name], of
11 _____ [print or type full address], declare under penalty of perjury
12 that I have read in its entirety and understand the Stipulated Protective Order that was
13 issued by the United States District Court for the Central District of California on [date]
14 in the case of _____ [Michael Duross v. Home Depot U.S.A., Inc.,
15 Case No. 2:17-CV-07006 SJO (JPRX)]

16 I agree to comply with and to be bound by all the terms of this Stipulated
17 Protective Order and I understand and acknowledge that failure to so comply could
18 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
19 that I will not disclose in any manner any information or item that is subject to this
20 Stipulated Protective Order to any person or entity except in strict compliance with the
21 provisions of this Order.

22 I further agree to submit to the jurisdiction of the United States District Court for
23 the Central District of California for the purpose of enforcing the terms of this Stipulated
24 Protective Order, even if such enforcement proceedings occur after termination of this
25 action. I hereby appoint _____ [print or type full name]
26 of _____ [print or type full address and telephone
27 number] as my California agent for service of process in connection with this action or
28 any proceedings related to enforcement of this Stipulated Protective Order.

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Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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