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 9 Home Depot U.S.A., Inc.

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**  
 12

13 JOHN BARDWELL, an individual,  
 14 Plaintiff,

15 v.

16 HOME DEPOT U.S.A., INC., a Delaware  
 17 corporation doing business in California;  
 18 GLADIS MELENDEZ, an individual;  
 19 TOM PENGELLY, an individual; KARA  
 20 NOTO, an individual; and Does 1 through  
 21 50, inclusive,  
 Defendants.

CASE NO.: 5:15-cv-01201-GHK(KKx)  
 [Assigned to the Honorable George H.  
 King]

**~~PROPOSED~~ PROTECTIVE ORDER**

Removal: June 19, 2015  
 Trial: Not Set

1 CONFIDENTIALITY ORDER

2 GOOD CAUSE APPEARING, the Court hereby approves the Stipulation  
3 regarding Confidentiality Order and HEREBY ORDERS THAT:

4 1. This action is likely to involve personnel records, medical records,  
5 trade secrets, data, and other valuable research, development, commercial, financial,  
6 strategic, and/ or proprietary information for which special protection from public  
7 disclosure and from use for any purpose other than prosecution of this action is  
8 warranted. Such confidential and proprietary materials and information consist of,  
9 among other things, confidential business of financial information, information  
10 regarding confidential business practices, or other confidential research,  
11 development, or commercial information (including information implicating  
12 privacy rights of third parties), information otherwise generally unavailable to the  
13 public, or which may be privileged or otherwise protected from disclosure under  
14 state or federal statutes, court rules, case decisions, or common law. Accordingly, to  
15 expedite the flow of information, to facilitate the prompt resolution of disputes over  
16 confidentiality of discovery materials, to adequately protect information the Parties  
17 are entitled to keep confidential, to ensure that the Parties are permitted reasonable  
18 necessary uses of such material in preparation for and in the conduct of trial, to  
19 address their handling at the end of the litigation, and serve the ends of justice, a  
20 protective order for such information is justified in this matter. It is the intent of the  
21 Parties that documents or information will not be designated as “Confidential  
22 Information” for tactical reasons and that nothing be so designated without a good  
23 faith belief that it has been maintained in a confidential, non-public manner, it is  
24 entitled to confidentiality under the terms of this Order, and there is good cause why  
25 it should not be part of the public record of this case.

26 2. For purposes of this Order, “Confidential Information” means:  
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- 1 a) any personnel or personal information for employees of Home Depot,  
2 its parent or subsidiaries, including any personnel database identifying  
3 such employees;
- 4 b) any document or information designated as confidential in accordance  
5 with paragraph 6 of this Order; and
- 6 c) any aggregation of Confidential Information.

7 The identification of an individual document or category of documents or  
8 information as Confidential Information under paragraphs 2(b) or 2(c) may be  
9 challenged pursuant to paragraph 11 of this Order.

10 3. For purposes of this Order, “Document” means all written, recorded, or  
11 graphic material, in hard copy or electronic format, including but not limited to  
12 deposition transcripts and exhibits, trial and hearing transcripts and exhibits,  
13 pleadings, motions, affidavits, and briefs that may quote, summarize, or contain  
14 Confidential Information.

15 4. For purposes of this Order, “Producing Party” means a party that  
16 produces Confidential Information or other information in connection with this  
17 litigation.

18 5. For purposes of this Order, “Recipient” means a named party in this  
19 litigation (or counsel thereto and their agents) who receives Confidential  
20 Information or other information in connection with the litigation.

21 6. A. The Producing Party may designate as Confidential Information any  
22 information it believes to be confidential, including, without limitation:

- 23 a) non-public information about a past, present or potential employee of  
24 Home Depot or a subsidiary, including personnel records, evaluations,  
25 compensation levels, databases, surveys, statistical analyses, analyses  
26 of personnel practices, or other information incorporating or  
27 aggregating information pertaining to individuals; and  
28

1           b)     trade secrets or other non-public proprietary, strategic or commercial  
2                   information, data or research of Home Depot or one or more of its  
3                   subsidiaries.

4           7.     To designate Confidential Information on Documents, the Producing  
5 Party shall place a legend or stamp upon the Document indicating such in a way that  
6 brings the designation to the attention of a reasonable examiner, or otherwise puts  
7 the Recipient on reasonable notice that it contains Confidential Information. To  
8 designate Confidential Information in testimony (or in exhibits referred to therein),  
9 the Producing Party shall:

- 10           a)     make an oral statement to that effect on the record; or  
11           b)     notify the Recipient in writing at any time up until twenty (20) days  
12                   after receipt of the transcript.

13           8.     The Recipient of Confidential Information shall use that information  
14 solely in connection with this litigation, and shall not disclose Confidential  
15 Information to any person except:

- 16           a)     named plaintiffs, in accordance with the procedures set forth in  
17                   paragraph 8 of this Order;  
18           b)     the Court and its officers (including court reporters);  
19           c)     counsel of record in this action and employees of counsel in this action  
20                   who have been actively engaged in the conduct of this litigation;  
21           d)     Home Depot's or its subsidiaries' or affiliates' in-house counsel;  
22           e)     experts or litigation consultants engaged by counsel to assist in this  
23                   litigation, provided that these expert witnesses or litigation consultants  
24                   expressly agree to be bound by the terms of this Order and not to  
25                   disclose Confidential Information except as permitted herein; or  
26           f)     fact witnesses providing testimony by deposition or at any court  
27                   proceeding in this case but only in accordance with the procedures set  
28                   forth in paragraph 8 of this Order.

1           9.     The Recipient of Confidential Information shall disclose such  
2 information to persons set forth in paragraphs 8(a) or 8(f), of this Order only under  
3 the conditions set forth below:

4           a)     Prior to disclosure of Confidential Information to persons described in  
5 paragraphs 8(a) or 8(f), the Recipient shall advise that person that,  
6 pursuant to this Order, he or she may not divulge such information to  
7 any other individual.

8           b)     Any person who receives Confidential Information pursuant to  
9 paragraphs 8(a) or 8(f), shall execute an Agreement in the form  
10 annexed hereto as Exhibit A. Each original, executed Agreement shall  
11 be maintained in the files of the Recipient and shall be available for  
12 review by all counsel and the Parties upon reasonable notice.

13          c)     The Recipient who discloses Confidential Information pursuant to  
14 paragraphs 8(a) or 8(f), shall maintain a list specifically identifying the  
15 persons to whom the information was disclosed and the Bates number  
16 and/or other means sufficient to identify such information disclosed.

17          10.    Any use of Confidential Information at trial or other court hearings or  
18 proceedings shall be governed by the orders of the trial judge. This Order does not  
19 govern the use of Confidential Information at trial or other court hearings or  
20 proceedings.

21          11.    In the event the Recipient disputes the Producing Party's designation of  
22 individual documents or a category of documents or information as Confidential  
23 Information, the Recipient shall notify the Producing Party in writing of such  
24 dispute. In an effort to settle such dispute without judicial intervention, the Parties  
25 shall meet and confer, pursuant to Civil Local Rule 37-1, to determine whether the  
26 restrictions imposed by this Order are warranted with respect to such disputed  
27 information. If resolution of the dispute cannot be reached, the Parties shall  
28 formulate a written Joint Stipulation pursuant to Civil Local Rule 37-2 et seq. The

1 Joint Stipulation shall be filed and served with a Notice of Motion. In connection  
2 with such a motion, the Producing Party shall bear the burden to show that the  
3 information is entitled to continued protection under applicable law. During the  
4 pendency of such dispute or motion, and until the court may rule otherwise, the  
5 information designated Confidential Information shall remain subject to the  
6 designations and restrictions of this Order.

7 12. Inadvertent failure to designate Confidential Information shall not be  
8 construed as a waiver, in whole or in part, and may be corrected by the Producing  
9 Party by written notification to the Recipient promptly upon discovery of the failure  
10 to designate.

11 13. All information obtained by a Recipient in discovery in this litigation,  
12 regardless of whether it is Confidential Information, shall be used by the Recipient  
13 solely for the prosecution or defense of the claims in this litigation, and shall not be  
14 used by the Recipient in any other legal action, or for any business, commercial,  
15 competitive, personal, publicity, media or other purpose, except: purpose, except:

- 16 a) Nothing herein shall preclude Home Depot (or a subsidiary of it) from  
17 pursuing legal or other business action in discovered instances of  
18 misconduct as to its own employees or ensuring that its employees are  
19 acting in accordance with the law.
- 20 b) Nothing herein shall be construed as authorizing or encouraging a party  
21 to disobey a lawful subpoena or court order issued in another action.
- 22 c) Nothing herein shall preclude a judge of any other proceeding from  
23 making orders governing the use of such information in a hearing or  
24 proceeding over which the judge presides.

25 No Recipient or other person to whom Confidential Information is disclosed  
26 shall copy, transcribe, or otherwise reproduce in written or any other form any part  
27 or portion of any Confidential Information except as necessary for purposes of the  
28 litigation.

1           14.    Within fifteen (15) business days after the conclusion of this litigation,  
2 by adjudication (including appeals) or otherwise, the Recipient shall return to the  
3 Producing Party all Confidential Information, all copies of such information, and  
4 any Documents incorporating such information. Alternatively, at the request of the  
5 Producing Party, the Recipient shall destroy all such materials and certify in writing  
6 that all such materials have been destroyed.

7           15.    Confidential Information may only be filed under seal pursuant to a  
8 court order authorizing the sealing of the specific Confidential Information at issue.  
9 A party that seeks to file under seal any Confidential Information must comply with  
10 Civil Local Rule 79-5. Confidential Information may only be filed under seal  
11 pursuant to a court order authorizing the sealing of the specific Confidential  
12 Information at issue. If a party's request to file Confidential Information under seal is  
13 denied by the court, then the Recipient may file the information in the public record  
14 unless otherwise instructed by the court.

15           16.    Prior to filing any Confidential Information, and any pleadings,  
16 motions, or other papers filed containing such information with the Court, the party  
17 shall present a written application and a proposed order to the judge, along with the  
18 documents submitted for filing under seal. Where possible, the Parties should seek  
19 to file with the Court under seal only the portions of filings containing Confidential  
20 Information.

21           17.    The restrictions set forth in this Order shall not apply to:

- 22           a)    information that was, is or becomes public knowledge through its  
23                authorized release by a person or entity who rightfully obtained and  
24                possesses such information during the normal course of business, and  
25                not in violation of this Order;
- 26           b)    Home Depot (or its subsidiaries), with respect to its own information or  
27                information received or created during the normal course of its own  
28                business; or

1 c) the Court and court personnel, who are subject only to the Court's  
2 internal procedures regarding the handling of material filed or lodged,  
3 including material filed or lodged under seal.

4 Whether information that becomes a matter of public record in any other  
5 manner may still be subject to protection as confidential shall be determined  
6 according to the standards and procedures set forth in paragraphs 2 through 12 of  
7 this Order. The owner of Confidential Information shall be able to seek protection of  
8 that information in accordance with paragraph 6 of this Order even if it did not  
9 produce that information in discovery.

10 18. Nothing in this Order shall be deemed to be a limit or waiver of the  
11 attorney-client privilege, the work product privilege, or any other relevant privilege.  
12 Further, inadvertent production of privileged information shall not waive the  
13 privilege. If privileged information is inadvertently produced, the Recipient agrees  
14 that, upon request from the Producing Party, it shall promptly return all copies of  
15 Documents containing the privileged information, delete any versions of the  
16 Documents containing the privileged information on any database or computer filing  
17 system it maintains, and make no use of the privileged information.

18 19. Nothing in this Order shall prohibit any party from objecting to the  
19 production or disclosure of Confidential Information solely on the grounds that such  
20 information is confidential or sensitive, or on any other grounds. Furthermore,  
21 nothing in this Order shall preclude the Parties from objecting to the admissibility or  
22 use of Confidential Information.

23 20. In the event plaintiffs or their counsel obtain information of Home  
24 Depot's (or its subsidiaries) from a third party that Home Depot believes is  
25 confidential, Home Depot may designate such information Confidential Information  
26 pursuant to this Order and it shall be treated as such in accordance with this Order.

27 21. If a Recipient discloses Confidential Information in a manner not  
28 authorized herein, the Recipient must immediately and in writing notify the



1 Producing Party of all pertinent facts relating to such disclosure and, without  
2 prejudice to other rights and remedies of the Producing Party, make every effort to  
3 prevent further disclosure by the Recipient or by the person to whom the Recipient  
4 disclosed such information.

5         22. The Court shall retain jurisdiction, both before and after the entry of  
6 final judgment in this case, whether by settlement or adjudication, to construe,  
7 enforce, and amend the provisions of this Order.

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9 \_\_\_\_\_  
10 Hon. Kenly Kiya Kato  
11 United States Magistrate Judge

12 Dated: August 13, 2015

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**EXHIBIT A**

**AGREEMENT CONCERNING INFORMATION COVERED BY A  
PROTECTIVE ORDER ENTERED IN UNITED STATES  
DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA –  
EASTERN DIVISION**

The undersigned hereby acknowledges that he/she has read the Confidentiality Protective Order (“Order”) in Bardwell v. Home Depot U.S.A., Inc., et al., Case No. 5:15-cv-01201-GHK(KKx), and understands its terms, agrees to be bound by each of those terms, and agrees to subject himself/herself personally to the jurisdiction of the United States District Court, Central District of California – Eastern Division, for the purpose of enforcing its terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any Confidential Information made available to him/her other than in accordance with the Order.

DATED: \_\_\_\_\_

BY: (Sign) \_\_\_\_\_

(Print) \_\_\_\_\_

(Name of Employer) \_\_\_\_\_