

1 **LAW OFFICES OF**

2 **WAGNER & JONES LLP**

3 Nicholas J.P. Wagner #109455

4 Andrew B. Jones #076915

5 Daniel M. Kopfman #192191

6 Lawrence M. Artenian #103367

7 Paul C. Mullen #216447

8 1111 E. Herndon, Ste. 317

9 Fresno, CA 93720

10 559/449-1800

11 559/449-0749 Fax

12 Attorneys for Plaintiff MICHAEL MARTIN

13 UNITED STATES DISTRICT COURT

14 EASTERN DIVISION - FRESNO

15 MICHAEL MARTIN,

16 Plaintiff,

17 vs.

18 HOME DEPOT U.S.A., INC., a
19 corporation, and DOES 1-25,
20 inclusive,

21 Defendants.

22) Case No. 1:11-CV-298 AWI SMS

23)

24)

25)

26) **CONFIDENTIALITY AGREEMENT AND**
27) **STIPULATED PROTECTIVE ORDER**

28)

29)

30)

31)

32)

33)

34)

35)

36 Plaintiff MICHAEL MARTIN ("Plaintiff") and Defendant THE

37 HOME DEPOT U.S.A., INC. ("Defendant") (collectively the

38 "Parties") possess certain confidential information which may be

39 disclosed to the opposing party in this action pursuant to

40 discovery undertaken herein. The Parties, through their

41 attorneys of record, stipulate that they have no wish or

42 intention to use confidential information for any purpose beyond

1 this action. The purpose of this Agreement/Order is to ensure
2 that the confidentiality of such information is protected
3 consistent with California and federal law. This Agreement/Order
4 is not intended to afford any protection to information that
5 would not be considered confidential under applicable law.

6 Pursuant to Local Rule 141.1(c), the Parties recognize the
7 following types of information is eligible for protection as
8 confidential information and jointly request that this Agreement
9 be entered as an enforceable Order of this Court to protect the
10 confidential nature of the information protected by this
11 Agreement/Order: Defendant asserts it is in possession, custody
12 or control of information that contains and/or constitutes
13 confidential information regarding employees and former
14 employees or which involves trade secrets or confidential
15 business information or private information, including, but not
16 limited to, private financial information subject to protection
17 under the California Constitution, California Civil Code,
18 California Code of Civil Procedure or other applicable law
19 (collectively referred to as "Confidential Information").
20 Defendant has a cognizable interest in the Confidential
21 Information, and the disclosure of such Confidential Information
22 may result in harm to the disclosing party or other
23 individuals/entities to which the information relates. Plaintiff
24 contends that some of this information, which Defendant

1 considers to be Confidential Information, is relevant to the
2 above-captioned action and discoverable. Plaintiff is in
3 possession of private financial information, subject to
4 protection under California law, that Plaintiff has a cognizable
5 interest in the Confidential Information produced by Plaintiff,
6 and that the disclosure of such Confidential Information may
7 result in harm to Plaintiff.
8

9 **CONFIDENTIALITY AGREEMENT**

10 Accordingly, subject to the approval of the Court, the
11 Parties agree that the following procedure shall be employed for
12 the protection of the Parties' Confidential Information:
13

14 1. For purposes of this Agreement/Order, Confidential
15 Information means any document, writing, paper, reproduction,
16 model, photograph, film, videotape, tangible thing, transcript
17 or oral testimony or recorded statement, which the party in
18 possession (the "Producing Party") designates as "Confidential."
19

20 2. Whenever a Producing Party produces a document or
21 thing containing information that said party deems to be
22 Confidential Information, and which said party wishes to be
23 subject to this Agreement/Order, the Producing Party shall mark
24 or designate the document or thing "Confidential – Subject to
25 Protective Order" or use words to that effect. The Parties will
26 act in good faith in determining whether information is
27
28

1 Confidential Information and will not "blanket" designate all
2 produced documents as Confidential Information.

3 3. All material which a Producing Party designates
4 "Confidential" in this action shall be maintained in strict
5 confidence by the Parties, and used solely for the litigation of
6 and/or arbitration hearing in this action. The Parties shall not
7 intentionally disclose or permit to be disclosed material which
8 is designated "Confidential" except to the extent that
9 Confidential Information may be shared with the following
10 persons or parties unless otherwise indicated herein:
11

12 (a) All Parties to this action, their respective
13 counsel, their legal and clerical staff, agents, and experts or
14 consultants of such counsel to whom it is necessary that such
15 confidential information be disclosed for the purpose of
16 preparing for the litigation of and/or arbitration hearing in
17 this action.
18

19 (b) Individuals testifying at a deposition or during
20 the trial or any related hearing in this action whom counsel for
21 the parties believe, in good faith, it is necessary to disclose
22 specific documents, subject to the conditions set forth in this
23 Agreement/Order and provided that the Producing Party is given a
24 reasonable opportunity to object to such disclosure and seek a
25 ruling from the Court if necessary;
26
27
28

1 (c) The Court and the Court's respective staff
2 members;

3 (d) Those present in the room during the trial in
4 this matter, including all pre-trial and motion hearings, and
5 during presentation/argument of this evidence, unless the Court
6 orders otherwise; and
7

8 (e) Any other person as to whom the parties agree in
9 writing.

10 4. Any material which a Producing Party considers to be
11 highly Confidential may be marked "Confidential - Attorneys'
12 Eyes Only." Material designated as such shall not be disclosed
13 to anyone other than legal counsel for the party to whom the
14 documents have been produced ("Receiving Party") and the Court
15 unless prior written authorization is obtained from the
16 Producing Party. In the event the Receiving Party believes
17 material designated as "Confidential - Attorneys' Eyes Only"
18 needs to disclosed to other individuals, the Parties agree to
19 "meet and confer" in an attempt to resolve the issue. In the
20 event the Parties cannot agree on a resolution, the issue shall
21 be presented to and resolved by the Court.
22
23

24 5. Counsel for all Parties in the within action, by
25 executing this Agreement/Order, undertake to abide by and be
26 bound by its provisions, and to use due care to ensure that its
27
28

1 provisions are known by and adhered to by those under their
2 supervision or control.

3 6. The Receiving Party reserves the right to challenge
4 the designation of any documents as "Confidential" or
5 "Confidential - Attorneys' Eyes Only" by moving the Court for an
6 order that the confidentiality designation be lifted. Nothing in
7 this Agreement/Order shall be construed as changing the law with
8 regard to which party has the burden of proving that information
9 is "Confidential" or "Confidential - Attorneys' Eyes Only" or as
10 changing the law with regard to when records may be sealed. The
11 burden of establishing that a document is "Confidential" or
12 "Confidential - Attorneys' Eyes Only" remains with the proponent
13 of the confidentiality. Before bringing such a challenge, the
14 Parties shall meet and confer in good faith in an attempt to
15 resolve the issue without court intervention.
16
17

18 7. At the conclusion of this litigation, all documents
19 and information designated as "Confidential" or "Confidential -
20 Attorneys' Eyes Only" will be returned to the Producing Party,
21 or counsel shall certify the destruction thereof, within a
22 reasonable amount of time, unless the Court has deemed the
23 originally designated confidential information otherwise as a
24 result of a motion or any other procedure.
25
26

27 Use of Confidential Documents
28

1 8. A court reporter or transcriber who reports or
2 transcribes testimony designated as "Confidential Information"
3 in this action that is designated as such on the record at the
4 deposition or other proceeding, shall separately bind those
5 portions of the testimony, and any "Confidential" exhibits, and
6 shall mark them "Confidential - Subject to Protective Order,"
7 but shall unbind them if deemed not "Confidential" by order of
8 the court or by agreement of the Parties.
9

10 9. If any Receiving Party or any of their representatives
11 (the "Compelled Party") becomes legally compelled or is required
12 by a court, agency or governmental body to make any disclosure
13 of information marked "Confidential" or "Confidential -
14 Attorneys' Eyes Only" pursuant to this Agreement/Order, the
15 Compelled Party shall immediately, but in no event later than
16 three (3) business days after the Compelled Party receives a
17 subpoena or otherwise becomes aware that he is or will be
18 required to make such disclosure, notify the Producing Party by
19 facsimile and telephone call to that party's counsel so that the
20 Producing Party may move for a protective order or otherwise
21 object or seek relief to prevent the disclosure of the
22 Confidential Information.
23
24

25 / / /
26

27 / / /
28

 / / /

NO WAIVER OF PRIVILEGE

10. A Party who, through inadvertence or mistake, produces any material or information subject to a legitimate claim of attorney-client privilege or attorney work product doctrine without intending to waive the claim of privilege shall not be held to have waived that privilege with respect to either that document or the subject matter of that document if, within ten (10) days of discovering the inadvertent disclosure of the protected material, the Producing Party provides written notice to the Receiving Party (a) identifying the material or information inadvertently produced, (b) stating the privilege asserted, (c) and requesting its return by the Receiving Party.

11. The Receiving Party, upon discovery of materials or information where it is reasonably apparent that the information is privileged under the attorney-client privilege or attorney work product doctrine, must either (a) promptly return the documents to the Producing Party as inadvertently disclosed material; or (b) notify the Producing Party, in writing, of the potential inadvertent disclosure, identify the materials or information by their "Bates" number, and provide the Producing Party with an opportunity to recall the material per the procedure established in Paragraph 10 .of this Agreement/Order. Notwithstanding the foregoing, this Agreement/Order is not intended to create attorney-client privilege or work product

1 obligations beyond those recognized by California law, but is
2 intended to create a process to ensure that the Parties' rights
3 are protected.

4 12. Upon the Receiving Party's receipt of written notice
5 from the Producing Party identifying inadvertently produced
6 documents, the Receiving Party must promptly return the
7 specified materials or information, any copies or notes thereof,
8 and any materials derived from or based thereon. If privileged
9 materials or information were produced in electronic form, the
10 Receiving Party must provide a certification that the specified
11 data and any copies thereof have been deleted.
12
13

14 13. After the return of the documents subject to a claim
15 of inadvertent production, the Receiving Party may contest the
16 Producing Party's claim(s) of attorney-client privilege, work-
17 product, or other protection from disclosure and submit such
18 issue to the Court for determination. That determination shall
19 be made without regard to the fact that any such document
20 previously has been produced, except that the Parties may argue
21 that the circumstances support an inference that disclosure was
22 not inadvertent.
23

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

GENERAL PROVISIONS

14. This Agreement/Order terminates and supersedes all prior understandings or agreements on the subject matter hereof.

15. This Agreement/Order is binding on all Parties to the Agreement/Order when signed. If not approved by the Court, the Parties agree to treat all materials designated as "Confidential" or "Confidential - Attorneys' Eyes Only" under this Agreement/Order as "Confidential" or "Confidential - Attorneys' Eyes Only" until a stipulated protective order is entered by the Court, at which such time that order shall cover such designations retroactively.

16. Nothing in this Agreement/Order prevents any Party from applying to the Court for a modification of this Agreement/Order should the moving party believe that the Agreement/Order, as originally agreed upon, is hampering its efforts to prepare for trial; or from applying to the Court for further or additional protective agreements; or from an agreement between The. Parties to any modification to this Agreement/Order, subject to the approval of the Court.

17. The failure of the producing party to designate information as "Confidential" or "Confidential - Attorneys' Eyes Only" shall not of itself be deemed a waiver in whole or in part of the claim of confidentiality, either as to specific information disclosed or as to other related information which

1 has been previously designated as "Confidential" or
2 "Confidential - Attorneys' Eyes Only," and the failure may be
3 corrected by supplemental written notice to recipients.

4 18. Nothing herein shall require any party to produce
5 documents or information which he/she/it otherwise believes are
6 not discoverable.
7

8
9 Dated: November 8, 2011 LAW OFFICES OF WAGNER & JONES LLP
10

11 /s/ Andrew B. Jones
12 ANDREW B. JONES
13 Attorneys for Plaintiff
14 MICHAEL MARTIN

15 Dated: November 8, 2011 OGLETREE, DEAKINS, NASH, SMOAK
16 & STEWART, P.C.
17

18 /s/ Donald Choi
19 DONALD CHOI
20 Attorneys for Defendants
21 THE HOME DEPOT U.S.A., INC.
22

23 **ORDER**

24 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that the
25 provisions of the concurrently-filed Confidentiality Agreement
26 and Stipulated Protective Order between Plaintiff MICHAEL MARTIN
27 and Defendant THE HOME DEPOT U.S.A., INC., ("Agreement/Order")
28

1 shall be entered as the Order of the Court and be binding upon
2 the parties.

3 IT IS FURTHER ORDERED that any request to seal records must
4 comply with the procedures set forth in Local Rule 141 and must
5 also comply with Federal Rule of Civil Procedure 26(c)(1),
6 including that the requesting party must make a showing of good
7 cause.
8
9
10

11 IT IS SO ORDERED.

12
13 Dated: November 10, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28