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11 **UNITED STATES DISTRICT COURT**

12 **EASTERN DISTRICT OF CALIFORNIA**

13 YVETTE C. BOMMARITO and JENNIFER Case No. 1:14-cv-01549-MCE-SKO
14 PECK,

15 Plaintiffs,

16 **STIPULATION AND PROTECTIVE
17 ORDER**

18 v.

19 HOME DEPOT U.S.A., INC., a corporation;
20 and DOES 1 to 100, inclusive,

21 Defendants.

22 /

23 **STIPULATED PROTECTIVE ORDER**

24 To adequately protect material entitled to be kept confidential, expedite the flow of
25 discovery and facilitate the prompt resolution of disputes over confidentiality, the parties to this
26 action, by and through their attorneys of record, hereby stipulate to and request that the Court enter
27 the following Stipulated Protective Order:

28 1. Documents or information produced or provided by the parties during the course of
discovery in the above-styled matter may be designated as "Confidential Information" so long as
the party who seeks confidentiality has a good faith belief that such document or information is
entitled to confidentiality under the terms of this Order.

1 2. For purposes of this Order, “Confidential Information” means (a) any personnel or
2 personal information for employees of defendant Home Depot U.S.A., Inc. (“Home Depot”), its
3 parent or subsidiaries, including any personnel database identifying such employees, (b) any
4 document or information designated as confidential in accordance with paragraph 6 of this Order,
5 and (c) any aggregation of Confidential Information. The identification of an individual document
6 or category of documents or information as Confidential Information under paragraphs 2(b) or
7 2(c) may be challenged pursuant to paragraph 9 of this Order.

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

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

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

17 6. A. The Producing Party may designate as Confidential Information any
18 information it believes to be confidential, including, without limitation, (i) non-public information
19 about a past, present or potential employee of Home Depot or a subsidiary, including personnel
20 records, evaluations, compensation levels, databases, surveys, statistical analyses, analyses of
21 personnel practices, or other information incorporating or aggregating information pertaining to
22 individuals, and (ii) trade secrets or other non-public proprietary, strategic or commercial
23 information, data or research of Home Depot or one or more of its subsidiaries.

24 B. To designate Confidential Information on Documents, the Producing Party shall
25 place a legend or stamp upon the Document indicating such in a way that brings the designation to
26 the attention of a reasonable examiner, or otherwise puts the Recipient on reasonable notice that it
27 contains Confidential Information. To designate Confidential Information in testimony (or in
28 exhibits referred to therein), the Producing Party shall (a) make an oral statement to that effect on

1 the record, or (b) notify the Recipient in writing at any time up until twenty (20) days after receipt
2 of the transcript.

3 7. The Recipient of Confidential Information shall use that information solely in
4 connection with this litigation, and shall not disclose Confidential Information to any person
5 except:

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

19 8. The Recipient of Confidential Information shall disclose such information to
20 persons set forth in paragraphs 7(a) or 7(f), of this Order only under the conditions set forth below:

- 21 a) Prior to disclosure of Confidential Information to persons described in
22 paragraphs 7(a) or 7(f), the Recipient shall advise that person that, pursuant
23 to this Order, he or she may not divulge such information to any other
24 individual.
- 25 b) Any person who receives Confidential Information pursuant to paragraphs
26 7(a) or 7(f), with the exception of current Home Depot employees, shall
27 execute an Agreement in the form annexed hereto as Exhibit A. Each
28 original, executed Agreement shall be maintained in the files of the
 Recipient and shall be available for review by all counsel and parties upon
 reasonable notice.
- 29 c) The Recipient who discloses Confidential Information pursuant to
30 paragraphs 7(a) or 7(f), shall maintain a list specifically identifying the
31 persons to whom the information was disclosed and the Bates number
32 and/or other means sufficient to identify such information disclosed.

33 9. In the event the Recipient disputes the Producing Party's designation of individual
34 documents or a category of documents or information as Confidential Information, the Recipient
35 shall notify the Producing Party in writing of such dispute by no later than 30 days prior to the

1 discovery cut-off. To the extent any documents designated as confidential are served less than 7
2 days prior to the discovery cut-off, any challenge to a confidentiality designation in those
3 documents must be made within 7 days following service of the documents. In an effort to settle
4 such dispute without judicial intervention, the parties shall meet and confer to determine whether
5 the restrictions imposed by this Order are warranted with respect to such disputed information. If
6 resolution of the dispute cannot be reached, the Producing Party shall, within 30 days of receipt of
7 written notice from Recipient challenging Producing Party's designation of individual documents
8 or a category of documents or information as Confidential Information, either (a) agree to de-
9 designate the documents as confidential, or (b) apply to the Court to uphold the designation. In
10 connection with such an application, the Producing Party shall bear the burden to show that the
11 information is entitled to continued protection under the Federal Rules of Civil Procedure and
12 applicable case law. During the pendency of such dispute or application, and until the court may
13 rule otherwise, the information designated Confidential Information shall remain subject to the
14 designations and restrictions of this Order.

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

18 11. All information obtained by a Recipient in discovery in this litigation, regardless of
19 whether it is Confidential Information, shall be used by the Recipient solely for the prosecution or
20 defense of the claims in this litigation, and shall not be used by the Recipient in any other legal
21 action, or for any business, commercial, competitive, personal, publicity, media or other purpose,
22 except that nothing herein shall preclude Home Depot (or a subsidiary of it) from pursuing legal
23 or other business action in discovered instances of misconduct as to its own employees or ensuring
24 that its employees are acting in accordance with the law. No Recipient or other person to whom
25 Confidential Information is disclosed shall copy, transcribe, or otherwise reproduce in written or
26 any other form any part or portion of any Confidential Information except as necessary for
27 purposes of the litigation.

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

6 13. Confidential Information shall not be filed in the public record of this litigation.
7 Any Confidential Information that is filed with the Court, and any pleadings, motions, or other
8 papers filed with the Court containing such information, shall be filed in accordance with Local
9 Rule 141. Where possible, only the portions of filings containing Confidential Information shall
10 be filed with the Court under seal.

11 14. The restrictions set forth in this Order shall not apply to:

12 a) information that was, is or becomes public knowledge through its
13 authorized release by a person or entity who rightfully obtained and
14 possesses such information during the normal course of business, and not in
15 violation of this Order;

16 b) Home Depot (or its subsidiaries), with respect to its own information or
17 information received or created during the normal course of its own
18 business.

19 Whether information that becomes a matter of public record in any other manner may still
20 be subject to protection as confidential shall be determined according to the standards and
21 procedures set forth in paragraphs 2 through 10 of this Order. The owner of Confidential
22 Information shall be able to seek protection of that information in accordance with paragraph 6 of
23 this Order even if it did not produce that information in discovery.

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

1 16. Nothing in this Order shall prohibit any party from objecting to the production or
2 disclosure of Confidential Information solely on the grounds that such information is confidential
3 or sensitive, or on any other grounds. Furthermore, nothing in this Order shall preclude the parties
4 from objecting to the admissibility or use of Confidential Information.

5 17. In the event plaintiffs or their counsel obtain information of Home Depot's (or its
6 subsidiaries) from a third party that Home Depot believes is confidential, Home Depot may
7 designate such information Confidential Information pursuant to this Order and it shall be treated
8 as such in accordance with this Order. Plaintiffs, however, may challenge such designation in
9 accordance with paragraph 9 above.

10 18. If a Recipient discloses Confidential Information in a manner not authorized
11 herein, the Recipient must immediately and in writing notify the Producing Party of all pertinent
12 facts relating to such disclosure and, without prejudice to other rights and remedies of the
13 Producing Party, make every effort to prevent further disclosure by the Recipient or by the person
14 to whom the Recipient disclosed such information.

15 19. The Court shall retain jurisdiction, both before and after the entry of final judgment
16 in this case, whether by settlement or adjudication, to construe, enforce, and amend the provisions
17 of this Order.

18 DATED: May 28, 2015

MAYALL HURLEY P.C.

19 _____
20 /s/ *John P. Briscoe*
21 JOHN P. BRISCOE
22 Attorneys for Plaintiffs
23 YVETTE C. BOMMARITO and JENNIFER PECK

24 DATED: May 28, 2015

LAFAYETTE & KUMAGAI LLP

25 _____
26 /s/ *Brian H. Chun*
27 BRIAN H. CHUN
28 Attorneys for Defendant
 HOME DEPOT U.S.A., INC.

EXHIBIT A

**AGREEMENT CONCERNING INFORMATION COVERED BY THE
STIPULATED PROTECTIVE ORDER ENTERED IN THE UNITED STATES DISTRICT
COURT, EASTERN DISTRICT OF CALIFORNIA**

5 The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order
6 (“Order”) in *Bommarito, et al. v. Home Depot U.S.A., Inc., et al.*, Case No. 1:14-CV-01549-MCE-
7 SKO and understands its terms, agrees to be bound by each of those terms, and agrees to subject
8 himself/herself personally to the jurisdiction of the United States District Court, Eastern District of
9 California for the purpose of enforcing its terms. Specifically, and without limitation upon such
10 terms, the undersigned agrees not to use or disclose any Confidential Information made available
11 to him/her other than in accordance with the Order.

13 | Dated:

15 | By: _____

(Type or print name of individual)

19 | Of:

Name of Employer

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ORDER

IT IS SO ORDERED.

Dated: June 4, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE